



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



BILL ANALYSIS

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

Senate Bill 529 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Jeremy Moss
Committee: Elections and Ethics

Date Completed: 10-30-23

INTRODUCTION

The bill would amend the process of canvassing and certifying election results. It would require the Governor to issue a Certificate of Ascertainment of the appointment of presidential electors (Certificate). Among other things, the Certificate would have to contain at least one security feature. The Certificate would have to be issued at least six days before the electors met to cast ballots, which the bill would change to the first Tuesday after the second Wednesday in December. Additionally, the bill would require the Governor to update the Certificate during a recount of a presidential election if the recount altered the election results. An affected presidential or vice-presidential candidate could appeal to the Michigan Supreme Court if a recount altered the winner of the election as reflected on the original Certificate.

The bill would reassign, from the Secretary of State (SOS) to the Board of State Canvassers, the tasks of calling a meeting within 20 days after the primary election to certify the results of the nomination of the candidates and of appointing the day to conduct an expedited canvass of election returns. Each county has a board of canvassers that are responsible for the canvassing and certification of election returns for all national, State, and local offices that are contained within their respective counties. If a board of county canvassers fails to certify the results of any election for any officer or proposition by the 14th day after the election, the Board must meet immediately and certify the results within 10 days. The bill would extend this time to 20 days. Additionally, the bill would require the board of county canvassers and other applicable county staff to be present during the completion of the canvass.

The bill also would replace current provisions regarding the breaking of an electoral tie. The tie would have to be resolved and the winner certified by the drawing of lots.

BRIEF RATIONALE

In December 2022, Congress passed the Electoral Count Reform and Presidential Transition Improvement Act, which updated the procedures through which presidential electors are selected and their votes counted. With the 2024 presidential election approaching, it has been suggested that the Michigan Election Law be amended to align with Federal law.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and no fiscal impact on local units of government. The potential change in cost to the State, in the Executive Office, would be determined by the new Certificate costs compared to the previous costs for the Certificates. It is impossible to predict the cost change as some of the criteria is confidential. Should additional canvass Board meetings be required, the average total cost for a Board meeting can be up to \$3,000 per meeting. Included in that total cost is a per diem of \$75 per member.

MCL 168.46 et al.

Legislative Analyst: Abby Schneider
Fiscal Analysts: Joe Carrasco, Jr.; Bobby Canell; Cory Savino, PhD

CONTENT

The bill would amend the Michigan Election Law to do the following:

- Require the Governor to issue a Certificate that contained a security feature at least six days before the electors met.**
- Require the electors to meet on the first Tuesday after the second Wednesday in December instead of the first Monday after the second Wednesday.**
- Require the Governor to issue superseding Certificates during a recount of a presidential election.**
- Prescribe the right of and procedure pertaining to an affected presidential or vice-presidential candidate to appeal to the Michigan Supreme Court for a recount.**
- Authorize the Secretary of the Board, instead of the SOS, to call a meeting of the Board within 20 days after the primary election to canvass election results.**
- Authorize the Secretary of the Board, instead of the SOS, to appoint the day for an expedited canvass, if applicable.**
- Require an electoral tie to be broken by the drawing of lots.**
- Allow a ballot label to include an option for straight-ticket voting (STV).**

Certificate of Ascertainment

Currently, as soon as practicable after the Board has, by the official canvass, ascertained the result of a Presidential election, the Governor must certify, under the seal of the State, to the United States Secretary of State, the names and addresses of the electors of the State chosen as electors of the President and Vice President of the United States.

The bill would require the Governor to issue a Certificate that did all the following:

- Set forth the names of the electors appointed and the canvass or other determination of the number of votes given or cast for each individual.
- Bore the seal of the State.
- Contained at least one security feature, as determined by the Governor, for the purpose of verifying the authenticity of the Certificate; the secure components of any security feature used would be confidential and not subject to disclosure under the Freedom of Information Act.

A Certificate would have to be issued at least six days before the date on which the electors for the President and Vice-President were to meet. Currently, the electors must convene at 2 PM on the first Monday after the second Wednesday in December following the elector's election. The bill would modify this to the first Tuesday after the second Wednesday in December.

Immediately after issuing the Certificate, the Governor would have to transmit the Certificate to the Archivist of the United States. The Governor also would have to transmit to each elector chosen for President and Vice President of the United States, on or before the date on which the electors were to convene, six duplicate-originals of the Certificate.

Certificates of Ascertainment During a Recount Petition

Under the bill, the fact that a recount petition had been filed, or that a recount was pending, would have no effect on the Governor's authority or responsibility to issue a Certificate as required above; however, if a mandatory recount of all precincts in the State were required

by Law¹, the Governor could not issue the Certificate until the completion and certification of the recount or until 3 PM on the sixth day before the date on which the electors for President and Vice President of the United States were to convene, whichever occurred first.

If the recount were completed and certified before 3 PM on the sixth day before the date on which the electors for President and Vice President of the United States were to convene, the Certificate would have to reflect the certified result of that recount. If the recount were not completed and certified before 3 PM on the sixth day before the date on which the electors for President and Vice President of the United States were to convene, the Certificate would have to reflect the original certification of the results of the election.

If a recount were completed by 11:59 PM on the second day before the date on which the electors for President and Vice President of the United States were to convene, and the result of that recount, as certified by the Board, altered the winner of the presidential election as reflected on the Certificate, an affected candidate for President or Vice President of the United States could have the certification reviewed by the Michigan Supreme Court, or could seek other judicial relief from the Michigan Supreme Court related to the certification including an order directing the Governor to issue an updated Certificate that reflected the updated and certified results of the presidential election.

An action to have the Michigan Supreme Court review the certification would have to be filed with the Court within 24 hours after the certification of the completed recount. A plaintiff filing an action in the Court would have to request an expedited hearing and request that the Court issue an order granting any judicial relief by 4 PM on the day before the date on which the electors for President and Vice President of the United States were to convene. If the Court issued an order by the day before the date on which the electors were to convene that required the Governor to issue an updated Certificate consistent with the certified results of the recount, the Governor would have to issue that updated Certificate before the date on which the electors were to convene.

If a recount were completed by 11:59 PM on the second day before the date on which the electors for President and Vice President of the United States were to convene, and the result of that recount, as certified by the Board, altered the winner of the presidential election as reflected on the Certificate, and the Michigan Supreme Court did not issue an order as described above before 4 PM on the day before the date on which the electors were to convene, the Governor would have to issue an updated Certificate that reflected the updated and certified results of the presidential election, as determined by the recount and certified by the Board, no later than 11:59 PM on the day before the date on which the electors were to convene.

An updated Certificate issued by the Governor would replace and supersede any prior Certificate issued, would have to be transmitted consistent with the requirements above for the Certificate, and would be conclusive with respect to the determination of electors for President and Vice President of the United States appointed by the State.

Canvassing and Certification

Currently, the Law requires the SOS to call a meeting of the Board at the Secretary's office not later than 20 days after the primary election, during which the SOS must certify to the chairman and secretary of the state central committee of each political party, for the purpose of canvassing the returns and declaring the results of the primary election for the nomination

¹ The Law requires a recount of all precincts to be performed if the Board certifies that a statewide primary or election has been determined by a vote differential of 2,000 votes or fewer.

of the candidates for such offices. The bill would specify that the Secretary of the Board would be responsible for calling the meeting, which would have to take place as soon as practicable after the receipt of the returns from the boards of county canvassers, while the SOS would be responsible for the certification. The bill would remove the requirement that this meeting take place at the office of the SOS.

The Board would then proceed in the same manner in canvassing the returns and in certifying, recording, and determining results of a primary election for the nomination of candidates for United States Senator and Governor as is done in canvassing the returns in the case of the election of State officials. In canvassing the returns of a primary election for the nomination of candidates for the offices of representative in Congress, State senator, and representatives in the Legislature, the Board would have to proceed in the same manner as is done in canvassing the returns in case of the election of representatives in Congress in districts composed of more than one county.

The bill also would specify that it would be the ministerial, clerical, and nondiscretionary duty of a board of county canvassers, and each of the members of a board of county canvassers, to certify election results based solely on statements of returns from the precincts and absent voter counting boards in the county and any corrected returns. "To certify" would mean to make a signed, written statement.

Expedited Canvass and Tie-Breaking

Under the Law, if the unofficial election returns show that the election of electors of President and Vice President of the United States is determined by a vote differential between the first place and second place candidates of fewer than 25,000 votes, the SOS must direct the boards of county canvassers to canvass returns for electors of President and Vice President of the United States on an expedited schedule. The SOS may appoint the day for the Board to conduct the expedited canvass of the returns for electors of President and Vice President of the United States and determine the results of that election. The bill would specify that the Secretary of the Board would appoint the day for the expedited canvass.

Currently, if two or more individuals are tied with the highest number of votes for any office, as canvassed by the Board, the Board must certify the result of the canvass and the Legislature must choose one of the candidates to fill the office. When the determination of the Board is contested, the Legislature decides which person is elected. The bill would delete these provisions. Instead, the tie would have to be resolved and the winner certified by the drawing of lots according to the Law.²

Failure to Certify

Currently, if a board of county canvassers fails to certify the results of any election for any officer or proposition by the 14th day after the election, the board of county canvassers must immediately deliver to the Secretary of the Board all records and other information pertaining to the election. The Board must meet immediately and make the necessary determinations and certify the results within the 10 days immediately following the receipt of the records from the board of county canvassers. Under the bill, the Board would have to meet, make the necessary determinations, and certify the results not later than the 20th day after the election. Additionally, the bill would require the board of county canvassers and all other county staff necessary to complete the canvass to be always present during the completion of the canvass by the Board.

² See MCL 168.852 for further detail.

Additionally, the bill would add a provision prohibiting a ballot cast by an eligible elector from being rejected or otherwise not counted in a canvass, recount, or court order altering the certification of a canvassing board on the grounds that an election official failed to comply with a directive set forth in the Law unless that ballot was otherwise ineligible under the Act or Federal law.

Tabulation

Under the Law, the ballot label must not include a position by which a voter may by a single selection record a straight party ticket vote for all the candidates of one party. The bill would amend this to allow STV (see **BACKGROUND**).

BACKGROUND

In January 2023, Congress passed the Electoral Count Reform Act. The Act clarified existing election law, specifying that the executive in each state often, but not always, the Governor was responsible for submitting that state's slate of electors. It also required that each state's Certificate of Ascertainment contain a security feature.

In July 2022, Promote the Vote, a coalition of Michigan organizations active in elections, circulated a petition proposing several constitutional amendments concerning voting rights. Among other amendments, the Proposal included a requirement that, if certified election results showed a tie between two or more candidates for any office, the winner would be selected through the drawing of lots under rules promulgated by the Board of State Canvassers. Promote the Vote submitted the petition to the Michigan Bureau of Elections after gathering enough signatures for the ballot initiative that became Proposal 22-2. Proposal 22-2 passed with 59.99% of the vote during the 2022 November general election.³

Currently, Michigan is one of six states that allow STV. Public Act 268 of 2015 abolished the use of STV in the State; however, in July 2016, a U.S. District Court decision found the abolishment of STV disproportionately affected African Americans and placed a preliminary injunction on enforcing the law for the 2016 election.⁴ In September 2018, the U.S. Sixth Court of Appeals ordered the ban on STV to take effect. The plaintiffs appealed to the U.S. Supreme Court which denied a request to keep STV for the 2018 general election; however, in November 2018 voters passed Proposal 3, which amended the State Constitution to allow voters to vote STV in a partisan general election.⁵

³ "2022 Michigan Election results," Elections, Michigan Department of State. Retrieved on 4-11-23.

⁴ "Straight-Ticket Voting", National Conference of State Legislatures. Retrieved on 9-26-23.

⁵ "November 2018 Ballot Proposal 18-3", Senate Fiscal Agency.

SAS\S2324\s529sb

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.