



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



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

Senate Bill 529 (as introduced 9-26-23)  
Sponsor: Senator Jeremy Moss  
Committee: Elections and Ethics

Date Completed: 10-2-23

## **INTRODUCTION**

The bill would amend the process of canvassing and certifying election results to align with the Federal Electoral Count Reform Act. It would require the Governor to issue a Certificate of Ascertainment of the appointment of presidential electors, and 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.

Currently, the Michigan Election Law requires the Secretary of State (SOS) to call a meeting of the Board of State Canvassers (Board) within 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 the results of the primary election for the nomination of the candidates. The bill would reassign this task to the Secretary of the Board, a group of four individuals appointed by the Governor with consent of the Senate to canvass and certify statewide elections. Additionally, the SOS has the responsibility, if necessary, to appoint the day for the Board to conduct an expedited canvass of the returns for electors of the President and Vice President of the United States. The bill would reassign this task to the Board.

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 under rules promulgated by the Board.

## **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 of Ascertainment 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 Board member.

MCL 168.46 et al.

Legislative Analyst: Abby Schneider  
Fiscal Analyst: 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 of Ascertainment of the appointment of electors of the President and Vice President of the United States that contained a security feature, at least seven 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.**
- Authorize the Secretary of the Board, not 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, not the SOS, to appoint the day for an expedited canvass, if applicable.**
- Require an electoral tie to be broken by the drawing of lots under rules promulgated by the Board.**
- 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 of Ascertainment of the appointment of electors 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 determination by the Governor and any security features 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 that the electors for the President and Vice-President met. 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 of Ascertainment of appointment of electors, 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.

### Canvassing and Certification

Currently, the Law requires the Secretary of State (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 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.

#### 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 under rules promulgated by the Board according to the Administrative Procedures Act.

#### 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.

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 mandatory directive set forth in the Law unless that mandatory directive explicitly stated otherwise.

## 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> "2022 Michigan Election results," Elections, Michigan Department of State. Retrieved on 4-11-23.

<sup>2</sup> "Straight-Ticket Voting", National Conference of State Legislatures. Retrieved on 9-26-23.

<sup>3</sup> "November 2018 Ballot Proposal 18-3", Senate Fiscal Agency.

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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.