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Senate Bill 590 and 591 (Substitute S-2 as reported)

Sponsor: Senator Mary Cavanagh

Committee: Elections and Ethics

## **CONTENT**

Senate Bill 590 (S-2) would add section 845a to the Michigan Election Law to do the following:

- Allow a presidential or vice-presidential candidate who was aggrieved by an error in the Board of State Canvassers' (Board) certification or determination of the election to seek judicial review of such by a complaint for mandamus filed in the Michigan Supreme Court.
- Specify that a candidate could be aggrieved only because, but for an error, the candidate would have received the largest number of votes eligible to be counted in the election.
- Require a complaint for mandamus to be filed with the Supreme Court within 48 hours after the certification or determination of the results of a presidential election and to name the Board as the defendant.
- Allow the Governor, the Attorney General (AG), the Secretary of State (SOS), and the candidate certified or determined to be the election winner to intervene.
- Require the Supreme Court's final order to be issued at least a day before the date that the presidential electors convened.<sup>1</sup>
- Prohibit a proceeding under the bill from delaying the Board in certifying or determining the results of a presidential election, the Governor in issuing or transmitting a Certificate of Ascertainment, or a recount.
- Prohibit a party in a proceeding from seeking any preliminary injunctive relief.

Senate Bill 591 (S-2) would amend the Revised Judicature Act to prohibit a private person from bringing an action for quo warranto (a challenge of applicable authority) that related to the offices of presidential and vice-presidential electors.

The bills are tie-barred. Senate Bill 590 also is tie-barred to Senate Bill 529, which would amend the process of canvassing and certifying election results in the Michigan Election Law to align with the Federal Electoral Count Reform Act.

MCL 168.13 et al. (S.B. 590)  
600.4501 et al. (S.B. 591)

## **BRIEF RATIONALE**

Following the 2020 presidential election, the certification and determination of the election results in Michigan were challenged in a variety of ways. Multiple lawsuits were filed throughout the State alleging voter fraud, with several calling for the Board to delay certifying the results of the election.<sup>2</sup> Some attribute these lawsuits to Michigan's lack of a clear policy pertaining to contesting election results. In 2022, Proposal 2 addressed this concern by amending the Constitution to specify that the certification of an election by the Board is final

<sup>1</sup> Currently, electors convene on the first Monday after the second Wednesday in December. Senate Bill 529 would change this to the first Tuesday after the second Wednesday in December.

<sup>2</sup> Annie Grayer, et al., "Michigan certifies Biden's win as Trump challenges in other key states fizzle", *CNN Politics*, November 23, 2020.

and that it can only be overturned by a recount supervised by the Board or a post-certification court order.<sup>3</sup> Accordingly, it has been suggested that Michigan Election Law be amended to codify that judicial process.

Legislative Analyst: Abby Schneider

### **FISCAL IMPACT**

As the bills appear to narrow the procedural scope of election challenges, it's possible the bills would create a cost savings for State and local courts by providing strict procedures to challenge presidential elections and/or dismiss frivolous complaints.

Date Completed: 10-27-23

Fiscal Analyst: Michael Siracuse

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<sup>3</sup> "November 2022 Ballot Proposal 22-2", Senate Fiscal Agency.

[floor\sb590](#)

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