



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 590 & 591 (as enacted)  
Sponsor: Senator Mary Cavanagh  
Senate Committee: Elections and Ethics  
House Committee: Elections (discharged)

**PUBLIC ACTS 255 & 256 of 2023**

Date Completed: 1-16-24

**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 of State Canvassers to delay certifying the results of the election.<sup>1</sup> Some attributed 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 and that it can only be overturned by a recount supervised by the Board or a post-certification court order.<sup>2</sup> Accordingly, it was suggested that Michigan Election Law be amended to codify that judicial process.

**CONTENT****Senate Bill 590 adds section 845a to the Michigan Election Law to do the following:**

- **Allow a presidential or vice-presidential candidate who is aggrieved by an error in the Board's 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 may 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 convene.**
- **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 amends the Revised Judicature Act to prohibit a private person from bringing an action for quo warranto (a challenge of applicable authority) that relates to the offices of presidential and vice-presidential electors.**

<sup>1</sup> Annie Grayer, et al., "Michigan certifies Biden's win as Trump challenges in other key states fizzle", *CNN Politics*, November 23, 2020.

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

Senate Bill 590 is tie-barred to Senate Bill 529, which amends the process of canvassing and certifying election results in the Michigan Election Law to align with the Federal Electoral Count Reform Act. The bills will take effect February 13, 2024.

### **Senate Bill 590**

Under the bill, a candidate listed on the ballot for the office of President or Vice President of the United States who is aggrieved by an error in the certification or determination of the results of a presidential election by the Board may seek judicial review of the certification or determination by a complaint for mandamus filed in the Supreme Court.<sup>3</sup> A candidate may be aggrieved only if, but for the error, the candidate would have received the largest number of votes eligible to be counted in the presidential election.

The bill grants the Supreme Court original and exclusive jurisdiction to consider a complaint for mandamus. Such a claim must be filed with the Supreme Court within 48 hours after the certification or determination of the results of a presidential election and must name the Board as a defendant. The Governor, the AG, the SOS, and the candidate certified or determined by the Board of State Canvassers to be the winner of the presidential election may intervene in a proceeding. A proceeding is the exclusive means of seeking judicial relief from the certification or determination of the results of a presidential election.

To have conclusive effect on the determination of electors appointed by the State, the Supreme Court's final order in a proceeding must be issued not later than the day before the date that the electors for President and Vice President of the United States convene.<sup>4</sup>

A proceeding may not delay any of the following:

- The Board certifying or determining the results of a presidential election as required.
- The Governor issuing or transmitting a Certificate of Ascertainment.
- A recount.

A party in a proceeding may not seek preliminary relief. A proceeding does not serve as an election audit under the Act.

### **Senate Bill 591**

The bill prohibits a private person from bringing an action for quo warranto (a challenge of applicable authority) that relates to the offices of presidential and vice-presidential electors.

Currently, an action may be brought in the circuit court of a county of the State if it appears that material fraud or error has been committed in an election to decide a constitutional amendment, question, or proposition to the electors of the State or a county, township, or municipality of the State. The bill specifies that this provision does not apply to, and would not authorize, an action relating to an election for public office.

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

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<sup>3</sup> Generally, a writ of mandamus is an order from a court to a lesser government official or other body ordering the official or body to fulfill their obligatory or statutory duties.

<sup>4</sup> Currently, electors convene on the first Monday after the second Wednesday in December. Public Act 269 changes this to the first Tuesday after the second Wednesday in December and will take effect February 13, 2024.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bills strengthen the Michigan Constitution by providing a framework for the legal contestation of an election's certification, as required by Proposal 22-2. Proposal 22-2 gave the Board of State Canvassers the sole authority to certify the results of an election for statewide or Federal office, subject only to a post-certification recount or a post-certification court order. According to testimony before the Senate Committee on Elections and Ethics, the bills provide for this post-certification court order by establishing a clear procedure for a candidate to challenge or contest the outcome of a certification. In so doing, the bills further Proposal 22-2's goals of strengthening the State's election process and democratic values.

### **Supporting Argument**

The bills will safeguard the State from confusion and attempts to defraud election certification. For example, granting the Supreme Court the original and exclusive jurisdiction to review the certification or determination of an election will prevent a proceeding from delaying the State's determination of election results, which further secures the country's electoral process. The bills establish a clear and efficient method for a candidate to challenge the certification of Michigan's election results.

### **Opposing Argument**

According to testimony before the Senate Committee on Elections and Ethics, the bills represent a significant change to Michigan's election law and should have been given more time for consideration by the Legislature before they were enacted.

Legislative Analyst: Abby Schneider

## **FISCAL IMPACT**

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

Fiscal Analyst: Michael Siracuse

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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.