

PROCEDURES FOR CONTESTING ELECTIONS

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Senate Bills 590 (S-2) and 591 (S-2) as passed by the Senate

Sponsor: Sen. Mary Cavanagh

House Committee: Elections

Senate Committee: Elections and Ethics

Complete to 11-7-23

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

(Enacted as Public Acts 255 and 256 of 2023)

SUMMARY:

Together, Senate Bills 590 and 591 would modify the procedures by which an election can be contested and would allow the results of a presidential election to only be challenged in the state supreme court.

Senate Bill 590 would amend the Michigan Election Law to provide a process by which an erroneous certification or determination made by the Board of State Canvassers (BSC) on the results of a presidential election can be remedied by the state supreme court.

A candidate for president or vice president who is aggrieved by an error in the BSC's certification or determination of the results of a presidential election could seek judicial review by filing a complaint for mandamus that names the BSC as a defendant with state supreme court within 48 hours of the applicable determination.¹ (A candidate would be considered aggrieved if they would have received the most votes in the election if not for the error.) The governor, the attorney general, the secretary of state, and the candidate certified or determined by the BSC to be the winner of the election could intervene in the proceeding.

The supreme court would have original and exclusive jurisdiction to consider such a complaint, and the court would have to issue its final order by the day before the presidential electors convene to have conclusive effect on the determination of electors appointed by the state.² A party in a proceeding would not be allowed to seek preliminary relief, and the proceeding would be the exclusive means of seeking judicial relief from an erroneous BSC decision.

A proceeding would not be considered an election audit and could not delay the BSC's certification or determination of the results of a presidential election, the governor's issuance of a certificate of ascertainment of Michigan's presidential electors, or a recount.

The bill is tie-barred to Senate Bill 529, a bill that would modify Michigan's presidential elector certification process,³ and to Senate Bill 591, which means that it could not take effect unless SBs 529 and 591 were also both enacted.

MCL 168.13 (amended); MCL 168.845a (proposed)

¹ Any deadline in these provisions that falls on a weekend or holiday would not be extended to the next business day.

² Federal law requires Electoral College electors to meet on the first Tuesday after the second Wednesday in December.

³ For a summary of Senate Bill 529 as reported from House committee, see:

<http://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-0529-6E44E5E7.pdf>.

Senate Bill 591 would amend the Revised Judicature Act to clarify the available procedures by which the results of a presidential election or other election for public office can be challenged in court. The bill is tie-barred to Senate Bill 590.

The act currently authorizes circuit court action to address fraud or error in an election regarding a constitutional amendment, ballot question, or proposition. Senate Bill 591 would specify that this provision does not apply to or authorize such an action relating to an election for public office. It would also prohibit a private person from bringing an action for quo warranto to challenge a person's right to the office of presidential and vice-presidential elector.

MCL 600.4501 and 600.4545

FISCAL IMPACT:

Senate Bills 590 and 591 would have an indeterminate fiscal impact on the state and on local court systems. The fiscal impact would depend on how provisions of the bills affected court caseloads and related administrative costs. Under SB 591, prohibiting private persons from bringing actions that challenge applicable authority could result in fewer court cases.

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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.