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

Sponsor: Senator Mary Cavanagh

Committee: Elections and Ethics

Date Completed: 1-4-24

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.**
- **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 amends the process of canvassing and certifying election results in the Michigan Election Law to align with the Federal Electoral Count Reform Act.

Senate Bill 590 (S-2)

Under the bill, a candidate listed on the ballot for the office of President or Vice President of the United States who was aggrieved by an error in the certification or determination of the results of a presidential election by the Board could seek judicial review of the certification or determination by a complaint for mandamus filed in the Supreme Court.¹ A candidate would 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.

¹ 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 its obligatory or statutory duties.

The bill would grant the Supreme Court original and exclusive jurisdiction to consider a complaint for mandamus. Such a claim would have to be filed with the Supreme Court within 48 hours after the certification or determination of the results of a presidential election and would have to 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 could intervene in a proceeding. A proceeding would be 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 would have to be issued not later than the day before the date that the electors for President and Vice President of the United States convened.²

A proceeding could 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 could not seek preliminary relief. A proceeding would not serve as an election audit under the Act.

Senate Bill 591 (S-2)

The bill would 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.

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 would specify that this provision would 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)

Legislative Analyst: Abby Schneider

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.³ 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 and that it can only be overturned by a recount supervised by the Board or a post-certification

² Currently, electors convene on the first Monday after the second Wednesday in December. Senate Bill 529, enacted as Public Act 269, changes this to the first Tuesday after the second Wednesday in December and will take effect February 13, 2024.

³ Annie Grayer, et al., "Michigan certifies Biden's win as Trump challenges in other key states fizzle", *CNN Politics*, November 23, 2020.

court order.⁴ Accordingly, it has been suggested that Michigan Election Law be amended to codify that judicial process.

FISCAL IMPACT

As the bills appear to narrow the procedural scope of election challenges, it is 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.

Fiscal Analyst: Michael Siracuse

⁴ "November 2022 Ballot Proposal 22-2", 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.