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## OLR Bill Analysis

### sHB 5310

#### ***AN ACT CONCERNING PRESIDENTIAL ELECTORS AND THE CERTIFICATION OR DECLARATION OF ELECTION RESULTS.***

#### **SUMMARY**

This bill creates several practices regarding the certification and election of public officials. Specifically, the bill does the following:

1. establishes procedures for nullifying the vote of, and removing and replacing, a presidential elector who does not vote as pledged (i.e., a faithless elector) (§ 1);
2. bars faithless electors from serving as presidential electors in the future (§ 1);
3. specifies that certain provisions on presidential electors are no longer effective if the National Popular Vote Interstate Compact (NPVIC) takes effect (§ 1);
4. moves, by one day, the date that (a) presidential electors convene and (b) state Supreme Court judges must certify the results of their finding or decision on an election official error or mistake in the vote count, from the first Monday after the second Wednesday in December to the first Tuesday after the second Wednesday in December (§§ 1 & 2);
5. specifies certain election certification duties are ministerial, not discretionary (§§ 3-7); and
6. authorizes any state resident to bring mandamus actions against certain officials charged with certifying election results (§§ 3-8).

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2024

### **§ 1 — FAITHLESS ELECTORS**

Under existing law, when a voter casts a ballot for a presidential candidate, the ballot is cast for a slate of presidential electors who have pledged to vote for that candidate when all state electors convene to choose the president and vice president of the United States (CGS § 9-175). State law currently requires presidential electors to vote for the presidential and vice-presidential candidates under whose names they ran on the official ballot, but it does not impose consequences if they fail to do so.

In the case of a presidential elector who does not vote for the candidates under whose name he or she ran on the ballot, the bill does the following:

1. nullifies the vote;
2. requires the elector to forfeit his or her office as presidential elector, causing a vacancy;
3. requires the other electors present to elect by ballot a replacement elector to fill the vacancy;
4. requires the replacement elector to vote for the candidates to whom the elector being replaced was pledged; and
5. bars future eligibility as an elector.

The bill also applies these provisions to replacement presidential electors who fail to vote for the candidates to whom the elector being replaced was pledged.

Additionally, the bill specifies that the law on presidential electors' casting of ballots, and the bill's related provisions, cease to be effective if the NPVIC (see BACKGROUND) takes effect under existing law (CGS § 9-175a).

### **§§ 3-8 — WRIT OF MANDAMUS**

The bill allows any state resident to bring a mandamus action directly to the Connecticut Supreme Court to compel certain officers to comply with laws relating to certification or declaration of election results (see the table below). The bill also establishes the court’s jurisdiction to hear these cases and allows them to refer the action to a superior court for fact-finding proceedings to assist the state Supreme Court in determining whether a mandamus should be issued.

Additionally, if a resident prevails in his or her mandamus action, the bill allows the recovery of court costs and reasonable attorney’s fees.

A writ of mandamus is a court order that compels a public official or agency to perform a specific duty. However, under Connecticut Supreme Court precedent, a writ is only proper when “(1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy” (*Miles v. Foley*, 253 Conn. 381 (2000)).

The bill also specifies that the official’s duties regarding the covered offices are ministerial, not discretionary, except as provided elsewhere by state election law.

**Table: Covered Offices and Certifying Officials**

<b>§</b>	<b>Office to be Certified</b>	<b>Certifying Officials</b>
3	Congressional legislators and presidential electors	Treasurer, secretary of the state (SOTS), and comptroller
4	Vacancy for Congressional seat	Treasurer, SOTS, and comptroller
5	Congressional senator	Governor and SOTS
6	Governor, lieutenant governor, and constitutional officers	People authorized to receive and count the votes and the General Assembly
7	State legislators and probate judges	Treasurer, SOTS, and comptroller

## **BACKGROUND**

### ***Related Case***

In 2020, the U.S. Supreme Court affirmed a Washington Supreme Court decision, holding that a state may constitutionally enforce a

presidential elector’s pledge to support his or her party’s nominee, and the state voters’ choice, for president (*Chiafalo et al. v. Washington*, 140 S. Ct. 2316 (2020)).

***National Popular Vote Interstate Compact***

The NPVIC is an interstate agreement that any state party to the agreement will commit its presidential electors to the national popular vote winner if enough jurisdictions have done so to cumulatively possess a majority of the Electoral College votes (currently 270 of 538 votes).

To date, 15 other states (California, Colorado, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington) and Washington, D.C. have adopted the compact. Together with Connecticut, they currently hold 205 electoral votes. (These electoral votes are based on population and the U.S. Census; so, they are current until at least the next decennial census in 2030.)

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15    Nay 4    (03/22/2024)