

ELECTION CHALLENGERS

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House Bill 6124 (H-1) as reported from committee

Sponsor: Rep. Ann M. Bollin

1st Committee: Elections and Ethics

2nd Committee: Judiciary

Complete to 6-21-22

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

BRIEF SUMMARY: House Bill 6124 would amend the Michigan Election Law to require the secretary of state (SOS) to institute a training program for election challengers, which would have to be offered by the SOS and each county clerk before each general, primary, and special election. Generally speaking, individuals would be prohibited from acting as challengers at an election unless they complete this training within 90 days of that election.

FISCAL IMPACT: House Bill 6124 would increase costs for the Department of State and have an otherwise indeterminate fiscal impact on the state and local units of government. (See *Fiscal Information*, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Currently, there are no laws that require election challengers to undergo any formal training. Although some individual organizations may require their members to complete a training program to serve as election challengers, no uniform curriculum or standards currently exist for these entities. However, other election officials, such as inspectors, are required to receive training on a regular basis. The absence of training protocols has caused ambiguity regarding who can serve as an election challenger, what is eligible to be challenged, and how these challenges are handled.

THE CONTENT OF THE BILL:

House Bill 6124 would require the SOS to establish and require, for each county clerk and for each political party, incorporated organization, and organized committee of interested citizens that seeks to designate election challengers at an election, a **comprehensive training** regarding the processes and procedures on election day and the powers, rights, and duties of election challengers. This comprehensive training also would have to be included in the training school provided by county clerks for election inspectors.

Election challenger training

At least 45 days and not more than 100 days before each primary, general, and special election, each county clerk and the SOS would have to offer **election challenger training** for each political party, incorporated organization, or organized committee of interested citizens that seeks to designate challengers at the election. This training would have to include the comprehensive training described above and training for both precinct polling places and absent voter counting boards.

A political party, incorporated organization, or organized committee of interested citizens that seeks to designate challengers at an election would have to attend and complete the election challenger training described above, and would have to do so only once.

Registry

The SOS would have to create and maintain a **registry** of entities completing the election challenger training as described above. The registry would have to be posted on the Department of State's website and be made available to each county clerk. The registry would have to include for each entity the name of each individual who attended the training and the name of a contact person for that entity. For training completed from a county clerk, the county clerk would have to notify the SOS with the required information, and the SOS would have to add it to the registry.

Training by parties, organizations, or committees

Upon completing election challenger training, and before the primary, general, or special election, the political party, incorporated organization, or organized committee of interested citizens would have to provide election challenger training for individuals seeking to be election challengers for that entity. The training would have to include at least the comprehensive training described above, and separate training would have to be provided for those seeking to be election challengers at an absent voter counting board.

Upon completion of this training, the entity would have to issue a **certificate of completion** to its election challengers signed by an officer of that entity. (A certificate could be issued electronically if electronically signed by an officer.) A certificate would be valid for 90 days after issuance. The entity would have to maintain a record of those issued a certificate to serve as a challenger on its behalf. If the entity issued a certificate of completion to a person not trained by the entity, the entity would be responsible for a state civil infraction and could be ordered to pay a civil fine of up to \$2,500.

A challenger could not serve as a challenger at any election unless, within the last 90 days before the election, the challenger had attended election challenger training and received a signed certificate of completion as described above. However, a challenger who attended the training within 90 days before an August primary election and received a signed certificate could serve as a challenger at the subsequent November general election without having to attend training as long as there has not been any statutory change requiring the training to be updated for the November general election.

Candidates as election challengers

Finally, under current law, a candidate for nomination or election to an office may not serve as a challenger at the election in which he or she is a candidate. The bill would allow that person to serve as a challenger as long as it was not in any precinct in the jurisdiction where he or she is a candidate.

MCL 168.31, 168.683, and 168.730 and proposed MCL 168.730a

The bill will not take effect unless House Bill 5783 is also enacted. (See Fiscal Information, below, for a description of HB 5783.)

BACKGROUND INFORMATION:

House Bill 6124 as reported is nearly identical to House Bill 4528,¹ which was passed by the House and Senate but was vetoed by the governor in October 2021. In her veto message, Governor Whitmer stated that the bill was worth further consideration but needed to have the necessary funding attached in order to accomplish its purpose.

FISCAL INFORMATION:

House Bill 6124 would require an additional FTE position under the Department of State's Bureau of Elections to administer the bill's requirements and additional costs. The skills needed for the training tasks required would result in FTE costs of a little under \$150,000 annually.

The bill is tie-barred to HB 5783, the FY 2022-23 House General Government budget bill, which includes Part 1A, appropriations for various state departments and agencies for FY 2021-22. House Bill 5783, as passed by the House of Representatives, appropriates \$150,000, under a One-Time Appropriations unit, for an election challenger training program substantively similar to that of HB 6124, as provided under boilerplate section 1301 of Part 2A. If enacted as is, HB 5783 (H-2) would provide funding only until September 30, 2022, and any unexpended balance would lapse to the general fund. There is currently no appropriation recommended for the program in FY 2022-23 or work project designation which would authorize unexpended funds in FY 2021-22 to not lapse but carry forward to FY 2022-23. The Department of State would incur the annual costs of \$150,000 if additional funds for the program are not appropriated on an ongoing basis.

In addition, House Bill 6124 would have an indeterminate fiscal impact on the state and on local units. The impact would depend on the number of political parties, incorporated organizations, or organized committees of interested citizens held responsible for a state civil infraction and ordered to pay a fine. Because the bill does not specify where revenue from civil fines would be dedicated, it is assumed, under section 8831 of the Revised Judicature Act, revenue collected from civil fines would be applied to the support of public and county law libraries. Under section 8827 of the Revised Judicature Act, the court could order payment of a justice system assessment of \$10. Revenue collected from payment of assessments would be deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

ARGUMENTS:

For:

Challengers play an important role in the election process. The bill would resolve the confusion that currently surrounds the process of challenging elections and would provide accountability for challengers.

¹ The substantive difference between the bills is that HB 6124 would provide that a political party, incorporated organization, or organized committee of interested citizens is only required to attend and complete the election challenger training once, while HB 4528 would have provided that those entities are only required to attend and complete the election challenger training once before each primary, general, and special election.

Against:

No arguments opposing the bill were offered in House committee.

POSITIONS:

The following entities indicated support for the bill:

- Pure Integrity for Michigan Elections (5-24-22)
- Michigan League of Conservation Voters (6-7-22)
- Michigan Townships Association (6-14-22)

The Department of State indicated a neutral position on the bill. (6-14-22)

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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.