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Senate Bill 1068 (Substitute S-4 as passed by the Senate)

Sponsor: Senator Jeremy Moss

Committee: Elections and Ethics

Date Completed: 12-30-24

INTRODUCTION

The bill would identify the rights of election challengers, allow challengers to serve in more than one voting site, expand the number of challengers that could serve at each type of voting site, and specify permitted and prohibited actions. Election challengers are registered electors appointed by political parties and interested organizations or groups of citizens to oversee the electoral process. Challengers may observe the election process at polling places, early voting sites, and absent voter counting boards and make challenges, such as identifying errors made during the electoral process. The bill would codify several current practices concerning election challenges, such as requiring a challenger to bear a credential and requiring each location where challengers were permitted to designate a challenger liaison.

Additionally, the bill would require an elector who challenged another elector's voter registration to submit a reliable information affidavit and modify inactive voter file provisions. It would establish specific requirements for challengers in city or township clerks' offices and absent voter counting places. It would modify the processes through which an election inspector would interact with challenges and through which an elector who requested an absent voter ballot could vote in-person. It also would shorten the period during which an elector could update the elector's address.

FISCAL IMPACT

The bill could create costs for the State's correctional system. The bill specifies that a person would be guilty of perjury for knowingly giving a false answer to questions regarding citizenship, age, or registered address information when a voter's right to vote was challenged. The bill is silent on the penalty for perjury; however, according to the Penal Code, the penalty for perjury can be a sentence of up to 15 years imprisonment.

New arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Based on 2023 data, the average cost to State government for felony probation supervision is approximately \$4,600 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$48,700.

MCL 168.509r et al.

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CONTENT

The bill would amend the Michigan Election Law to do the following:

- Prescribe the rights of election challengers, including the right to challenge a voter based on the voter's age, citizenship, or registration location.
- Expand, from 30 to 60 days, the maximum time during which an incorporated nonprofit organization or organized committee of interested citizens could inform a clerk of its intention to appoint election challengers.
- Prohibit a candidate up for election or nomination from serving as an election challenger in any location where the candidate's name appeared on any ballot that was issued or processed.
- Allow an election inspector at an early voting site to serve as a challenger during the early voting period but not on election day.
- Allow a challenger to serve in more than one voting site.
- Expand the maximum number of challengers that an organization or committee could appoint at each type of voting site at any one time.
- Require, in each location where challengers were permitted, the clerk, chairperson, or supervisor of the voting site to serve as a challenger liaison.
- Require challengers to follow the direction of a clerk or challenger liaison.
- Require each entity that appointed a challenger to provide to its challengers a credential, in a form prescribed by the Secretary of State (SOS).
- Prescribe permitted and prohibited actions of an election challenger, generally allowing observation of election proceedings and prohibiting interference.
- Require a clerk to provide space for challengers within the public area of the clerk's office that enabled challengers to observe electors requesting and being issued absent voter ballots.
- Allow a challenger in a clerk's office to challenge the right of an elector in the office to be issued an absent voter ballot and to challenge election processes.
- Require the supervisor of an absent voter counting place to provide space for challengers within the counting place that enabled challengers to observe the processing and tabulation of absent voter ballots from a reasonable distance.
- Allow a challenger in an absent voter counting place to challenge an absent voter ballot that was missing a ballot stub, an absent voter ballot with a stub number that did not match the number issued to the elector, an election process that was not being properly performed, or an improper completion of a ballot envelope's clerk signature section.
- Allow an elector to return an absent voter ballot to an early voting site.
- Require an election inspector to confirm with a clerk that an absent voter ballot was not received or accepted before an elector who wished to vote in person and had not surrendered an absent voter ballot could vote in-person.
- Shorten the time during which an elector could return a card verifying or updating the elector's address to a clerk, from 30 days to 15 days before an election.
- Require an elector to submit to a clerk a reliable information affidavit if the elector challenged the voter registration of another elector in the same municipality.

Additionally, the bill would repeal Section 729 and Section 732 of the Law. Section 729 requires a challenged elector to take an oath to answer questions confirming or denying the elector's qualifications and prescribe the penalty of perjury for an elector found to be lying. Section 732 allows challengers who have signed authority to be present in a room containing a ballot box.

Rights of Challengers; Generally

The bill would specify that a challenger would have the right to challenge any individual attempting to vote if the challenger knew or had good reason to believe that the individual was ineligible due to either of the following:

- The elector was not a citizen of the United States.
- The elector was not at least 18 years of age and would not be that age on election day.

Generally, a challenger would have to know or have reason to believe that the individual being challenged met at least one of the criteria described above and would have to articulate specific facts supporting the challenge to the challenger liaison (see Credentialed Election Challengers) for the challenge to be permissible. If a challenger did not identify the specific criteria that the individual being challenged failed to meet, or did not articulate specific facts supporting the challenge, the challenge would be impermissible. An election inspector would not be required to record such a challenge.

A challenger would *not* have the right to challenge the eligibility of any individual attempting to vote for any reason other than those reasons described above. An impermissible reason for challenging an individual's eligibility to vote would include any of the following:

- The individual's race or ethnic background.
- The individual's sexual orientation or gender identity.
- The individual's physical or mental disability.
- The individual's need for assistance in the voting process.
- The individual's manner of dress.
- The individual's support for or opposition to a candidate, political party, or ballot question.
- The appearance or impression of any of the traits described above.
- Any other characteristic or appearance of a characteristic that was not relevant to an individual's qualification to vote.

The bill would specify that, on election day, at an election day vote center, or at an early voting site, a challenger would *not* have the right to challenge the eligibility of any individual attempting to vote based on the challenger's assertion that the individual did not reside in the precinct, city, or township where the individual was attempting to vote. Challenges asserting that an individual who was registered to vote did not reside in the precinct, city, or township would have to be made before election day in accordance with the procedures requiring reliable information affidavits (see Pre-Election Challenges).

Credentialed Election Challengers & Challenger Liaisons

Under the bill, provisions referring to an incorporated organization would instead refer to an incorporated *nonprofit* organization.

Generally, political parties, incorporated organizations, or organized committees of citizens interested in the adoption or defeat of a ballot question or in the security of elections may designate or nominate election challengers. Generally, between 20 and 30 days before an election an incorporated organization or an organized committee of interested citizens may file with the clerk of the municipality in which an election is to be held a statement verbalizing the organization's or committee's intention to appoint challengers. The bill would expand this period from 20 to 60 days.

A challenger must be a registered elector in the State. Additionally, a candidate for an election or for nomination cannot serve as a challenger at the election where the individual is a candidate. The bill would specify that the candidate could not serve as a challenger in *any* location where the candidate's name appeared on any ballot that was issued or processed.

Further, the Law provides that an individual appointed as an election *inspector* must not act as a challenger at any time during the election day. Under the bill, this provision would apply to an election inspector at an election day precinct, election day vote center, absent vote counting place, or combined absent vote counting place; however, an individual serving as an election inspector at an early voting site could serve as a challenger during the early voting period.

Currently, a challenger may be designated to serve in more than one precinct. The designating entity must indicate the precinct the challenger will serve. Under the bill, a challenger also could be designated to serve in more than one clerk's office, early voting site, election day center, absent voter counting place, or combined absent voter counting place. The entity would have to indicate the challenger's locations.

Entities permitted to designate challengers may designate up to two challengers to serve in a precinct at a time and *one* challenger to serve at each counting board. The bill would delete this provision. Instead, under the bill, each entity that could appoint challengers would be allowed the following maximum number of challengers at each location at any one time:

- One challenger at a city or township clerk's office during the 40 days before and on election day.
- Two challengers at an election day precinct polling place.
- One challenger for every eight election inspectors at an election day vote center.
- Two challengers at an early voting site; however, if an early voting site had more than one station for checking in electors, each entity that appointed challengers would be allowed one additional challenger for each additional check-in station at the early voting site.
- During the processing and tabulation of absent voter ballots at an absent voter counting place or combined absent voter counting place before or on election day, and on any days required after election day to complete the processing and tabulation, one challenger for every eight election inspectors at the counting place, or, if there were seven or fewer election inspectors, one challenger.

In each location where challengers were permitted, one individual would have to be designated as a challenger liaison. At a clerk's office, the clerk or the clerk's designee would be the challenger liaison. At a precinct polling place, the precinct chairperson or the precinct chairperson's designee would be the challenger liaison. At an early voting site, election day vote center, absent voter counting place, or combined absent voter counting place, the supervisor or the supervisor's designee would be the challenger liaison.

The bill would provide that challengers would have to follow the directions of the clerk regarding the challengers' conduct at a city and township clerk's office and would have to follow the directions of the challenger liaison regarding the challengers' conduct at polling places, election day vote centers, early voting sites, absent voter counting places, and combined absent voter counting places. Clerks and election inspectors could give directions to challengers regarding how the challengers were to issue challenges without disrupting the issuing of ballots, voting, or processing and tabulation of ballots, including directions regarding where the challenger was located. A clerk or election inspector could require a challenger who violated the Law or who failed to follow the directions relating to the

challenger's conduct to leave the clerk's office, precinct polling place, election day vote center, early voting site, absent voter counting place, or combined absent voter counting place. Each challenger present at a location described above would have to possess a credential, in a form prescribed by the SOS, issued by the entity that appointed the challenger. The credential would have to be signed by the chairperson or presiding officer of the political party, incorporated nonprofit organization, or organized committee of interested citizens appointing the challenger and would have to indicate the name of the entity that appointed the challenger, the name of the challenger, and the date of the election and location or precinct where the challenger was authorized to serve. Upon arriving at a clerk's office, precinct polling place, election day vote center, early voting site, absent voter counting place, or combined absent voter counting place, a challenger would have to present the challenger's credential to the challenger liaison. The credential could be digital and could be presented on a telephone or other electronic device. Challengers could not wear or display the challenger's credential at a clerk's office, precinct polling place, election day vote center, or early voting site.

Credentialed Challengers; Permitted Actions

If a challenger did not impede an elector or election inspector in any way and the challenger allowed the clerk and each election inspector sufficient room to perform their duties, a challenger could do any of the following:

- Be present to observe election-related activities at any time a permitted location was open to the public; however, a challenger would not be permitted in nonpublic areas of a clerk's office or in areas of an absent voter counting place or combined absent voter counting place that contained electronic voting system servers that stored and accumulated election results and associated technology to administer the equipment.
- Make challenges, which would have to be directed to the challenger liaison.
- Observe opening and closing procedures at precinct polling places, early voting sites, and election day vote centers, if the challenger did not touch or handle any of the equipment, and the challenger did not impede an election inspector in completing the election inspector's duties.
- Observe the election and ballot tabulation process from a reasonable distance.
- Use an electronic device, as long as the electronic device was not disruptive and was not used to take photographs or make video or audio recordings, other than photographs or video recordings of posted election results.
- Take notes about the election process.
- Notify the challenger liaison of any perceived violation of election law by third parties, including campaigning within 100 feet of any entrance to a building in which a precinct polling place or early voting site was located, improper handling of a ballot by an elector, or any violation of election procedure by an individual.
- Remain in a precinct, election day vote center, early voting site, absent voter counting place, or combined absent voter counting place after the polls or early voting site closed, or the end of tabulation, and until the election inspectors completed the election inspectors' duties.

The bill would provide that, before a challenger could be restricted from access to an electronic voting system server used for a high-speed tabulation system, there would have to be either 1) no electronic adjudication in use or, if there were electronic adjudication in use, 2) the electronic adjudication screen would have to be connected to and located a sufficient distance from the electronic voting system server so that it was isolated but would still allow challengers to monitor the electronic adjudication screen.

Additionally, a challenger could observe applications to vote, voter registration lists, and other printed materials used to conduct elections, if the challenger did not do any of the following:

- Touch or handle any of those materials.
- Impede or delay the voting process.
- Impede an election inspector in completing the election inspector's duties.

A credentialed challenger also could be located behind the processing table and view the poll book as ballots were issued to electors and the name of each elector was entered into the poll book.

Regarding absentee ballots, if the poll book indicated that an absent voter ballot was mailed to an elector who was attempting to vote, and the elector did not surrender the absent voter ballot, a challenger could challenge the right to vote of that elector, and if a challenge were made, the elector's ballot would have to be prepared as a challenged ballot. If an elector mailed an absent voter ballot failed to surrender the ballot and a challenged ballot was *not* made, the elector's ballot could not be prepared as a challenged ballot. This provision would not apply to an absent voter who brought the absent voter's marked absent voter ballot to be cast on the tabulator at the absent voter's election day polling place or early voting site.

Credentialed Challengers; Prohibited Actions

Under the bill, a challenger could not do any of the following:

- Speak with, interact in any way with, or provide or offer any assistance to, individuals who were attempting to register to vote or registering to vote, attempting to vote or voting, or attempting to apply for or applying for an absent voter ballot.
- Physically touch or interact with ballots, absent voter ballot envelopes, electronic poll books, computer monitors, paper poll books, tabulators, voter assist terminals, or any other election materials or equipment.
- Be located so close to a poll book or other equipment or materials that the challenger's proximity to that equipment or materials interfered with the clerk's or an election inspector's ability to perform their duties.
- Be located so close to a voter that the challenger caused discomfort.
- Take any action to disrupt or interfere with voting, issuing absent voter ballots, processing or tabulating ballots, or any other election process.
- Intimidate an election official with the specific intent of interfering with the performance of that election official's duties.
- Prevent an election official from performing the election official's duties in conducting an election.
- Photograph, or audio or video record, in a clerk's office, early voting site, election day vote center, polling place, absent voter counting place, or combined absent voter counting place, except for posted election results.
- Make a challenge indiscriminately or without good cause, for an impermissible reason, or for the purpose of harassing, delaying, or annoying voters, election inspectors, or election officials.
- Do anything that is prohibited under Section 744, which generally prohibits a person from attempting to persuade voters, solicitation, and the display of campaign related material within 100 feet of polling locations.
- Threaten or intimidate an elector while the elector was entering or leaving a clerk's office, early voting site, polling place, or election day vote center, applying to vote or applying for an absent voter ballot, entering or leaving the voting compartment, or voting.
- Challenge an elector solely because the elector proved the elector's identity when voting in person or because the elector applied for an absent voter ballot in person by executing an affidavit in lieu of presenting photo identification.

Under the bill, an individual who challenged a qualified and registered elector indiscriminately, without good cause, or for the purpose of annoying or delaying voters, would be guilty of a misdemeanor.

Credentialed Challengers in City or Township Clerks Offices

Generally, the Law prescribes the rules and rights for challengers present at polling locations and counting boards during elections. Election officials must provide a space for challengers to observe voting and ensure election procedures are following. Challengers are allowed to watch how duties are performed, inspect poll books under supervision, raise concerns about improper voting or election processes, and challenge voter eligibility. Challengers may stay through vote counting and record votes and procedures but cannot physically handle ballots. Election officials must protect challengers from threats or intimidation as the challenges perform their duties. Challengers are prohibited from intimidating voters or causing disruptions. Additionally, the Law allows challengers to be removed due to disorderly conduct. The bill would delete these provisions, and instead, the following would apply.

The bill would require the clerk to provide space for challengers within the public area of the clerk's office that enabled challengers to observe from a reasonable distance electors requesting and being issued absent voter ballots. A challenger could be present only in areas of the clerk's office where electors could request an absent voter ballot in person, and only during the hours when the office was open for business. A challenger could not view the qualified voter file (QVF).

A challenger could challenge the right of an individual in the clerk's office to be issued an absent voter ballot if the challenger knew or believed that the individual was not a citizen of the United States or did not meet the appropriate age requirements. A challenger who made such a challenge would have to know or have good reason to believe that the individual being challenged did not meet one or more of these criteria and would have to explain why the challenger held that belief. If the challenger did not identify the specific criteria that the individual being challenged failed to meet or did not explain why the challenger believed that was the case, the challenge would be impermissible, and the clerk would not be required to record the challenge.

A challenger would *not* have the right to challenge the right of an individual to be issued an absent voter ballot based on the challenger's assertion that the individual did not reside in the city or township where the individual was applying for an absent voter ballot, and challenges asserting that an individual did not reside in the city or township could be made only in accordance with the procedures that would require an elector to challenge the registration by submission of a written affidavit. If an individual attempting to obtain an absent voter ballot in a clerk's office were challenged as unqualified, the clerk would have to follow the procedure requiring the clerk to obtain an oath from the elector in question and determine the permissibility of that elector's answers; however, the clerk would have to record that challenge information in the QVF rather than in a poll book.

A challenger could challenge a public election process that was related to the issuing of absent voter ballots to electors in the clerk's office. Such a challenge would have to state the specific element or elements of the process that the challenger believed was being improperly performed and the basis for the challenger's belief. If the challenger did not identify the specific element or elements of the process being challenged, or failed to explain why the challenger believed that was the case, the challenge would be impermissible, and the clerk would not be required to record the challenge. An explanation for a challenge to an election

process would not require a direct citation to statute or election administration materials. Upon a challenge made to an election process, the clerk would have to record, in a manner as provided by the SOS, the substance of the challenge, the name of the challenger making the challenge, the time of the challenge, whether the challenge was accepted or rejected, the reason the challenge was accepted or rejected, and, if the challenge were accepted, any remedial actions taken in response to the accepted challenge.

If a challenger wished to challenge a recurring element of the election process, the challenger would have to make a single, omnibus challenge rather than challenge each occurrence of the recurring election element. The omnibus challenge would have to be treated as a challenge to each occurrence of the process but would have to be made and recorded in the QVF only once or on the form that was included as an addendum in the poll book. If a challenge regarding a reoccurring element of the election process had already been submitted by a challenger of a political party, incorporated nonprofit organization, or organized committee of interested citizens, and a determination had been made, any further challenges made by a challenger of that same party, organization, or committee regarding that reoccurring element of the election process would be invalid and could not be considered.

Credentialed Challengers at Absent Voter Counting Places

Challengers would *not* be permitted to challenge the eligibility or qualifications to vote of an absent voter, or the verification of an absent voter's signature, at an absent voter counting place or combined absent voter counting place.

Challengers present at an absent voter counting place or combined absent voter counting place before and on election day at any time after the processing of ballots began would have to take and sign the oath to verify an elector's qualifications. Challengers could not take photographs, or audio or video record, within the counting place, except for posted election results.

The supervisor of the counting place would have to provide space for challengers within the counting place that enabled challengers to observe the processing and tabulation of absent voter ballots from a reasonable distance. Under the scrutiny of election inspectors, and in accordance with the election inspectors' direction, challengers could observe the opening of absent voter ballot envelopes, the tabulation of ballots, and the manual duplication or electronic adjudication of ballots that could not be read by the tabulator.

A challenger could challenge an absent voter ballot that was missing a ballot stub, or an absent voter ballot with a stub number that did not match the number issued to the elector if the election inspector confirmed that there was no reasonable explanation for the nonmatching stub number. If such a challenge were made, the elector's ballot would have to be prepared as a challenged ballot, and the ballot would have to be tabulated. Additionally, a challenger could challenge an election process that was not being properly performed. Such a challenge would have to state the specific process that the challenger believed was being improperly performed and articulate specific facts supporting the challenge. If the challenger did not identify the specific process being challenged, or failed to articulate specific facts supporting the challenge, the challenge would be impermissible, and an election inspector would not be required to record the challenge. An explanation would not require a direct citation to statute or election administration materials. Upon a permissible challenge made under these grounds, the election inspector would have to record in the poll book, or on a form that was included as an addendum to the poll book, the substance of the challenge, the name of the challenger, the time of the challenge, whether the challenge was accepted or

rejected, the reason the challenge was accepted or rejected, and, if the challenge were accepted, any remedial actions taken in response to the challenge.

A challenger also could challenge an improper completion of the clerk signature section on an absent voter ballot envelope, if the challenger saw that the clerk's signature was missing. If such a challenge were made and the election inspector confirmed that the clerk's signature was missing, the election inspector would have to accept the challenge and set that absent voter ballot envelope aside to be returned to the clerk for completion of the clerk signature section before processing.

If a challenger wished to challenge a recurring element of the election process, the challenger would have to make a single, omnibus challenge rather than challenge each occurrence of the recurring element. The omnibus challenge would have to be treated as a challenge to each occurrence of the process but would have to be made and recorded only once in the poll book, or on a form that was included as an addendum to the poll book.

Elections Inspectors; Challenges

Currently, election inspectors must challenge an applicant applying for a ballot if the inspector knows or believes the applicant is not qualified and registered in that precinct or if a challenge appears in connection with the applicant's name in the registration book. Under the bill, if a challenge appeared in connection with an applicant's name in the poll book, an election inspector would have to process the challenge of that applicant who applied for a ballot.

Currently, if at the time an elector proposing to vote is challenged there are several other electors waiting to vote, the challenged elector must stand to one side after the unchallenged voters had an opportunity to vote. The bill would delete this provision. Instead, it would require an election inspector to take that challenged elector aside to process the challenge, while another election inspector would have to process the other individuals in line to vote.

If an individual attempting to vote were challenged based on the presumption the elector was not a qualified voter, the individual could provide to an election inspector, either orally or in writing, sworn answers to both the following questions:

- Are you a citizen of the United States?
- Are you at least 18 years old, or will you be at least 18 years old on the day of the upcoming election?

If an individual's answers to both the questions above were yes, the individual would have to be issued a ballot and be permitted to vote, and the ballot would have to be identified as challenged.¹ If an individual's answer to at least one of the questions was no, the individual could not be issued a ballot and could not be permitted to vote. If an individual knowingly gave a false answer to either of the questions the individual would be guilty of perjury.

Currently, upon a permissible challenge, an election inspector must immediately identify the ballot voted by a challenged individual, if any, and make a written report that included the following information:

- All election disparities or infractions complained of or believed to have occurred.
- The name of the individual making the challenge.

¹ The Law prescribes procedures for handling ballots from challenged electors. Upon acceptance of a challenged ballot, election inspectors must mark it and maintain voter anonymity.

- The time of the challenge.
- The name, telephone number, and address of the challenged individual.
- Other information considered appropriate by the election inspector.

The bill would remove the need to record all election disparities or infractions complained of or believed to have occurred, the challenged individual's telephone number, and other information considered appropriate. It would require an election inspector to record the substance of the challenge, whether the challenge was accepted or rejected and the reasoning for this decision, and any remedial actions taken in response to the challenge. This information would have to be recorded in the poll book.

Absentee Ballots

If an elector who received an absent voter ballot wishes to vote in person, the elector must surrender the elector's absent voter ballot to the board of election inspectors in the elector's precinct. The bill also would allow an elector to surrender the elector's absent voter ballot at an early voting site.

If an elector did not receive an absent voter ballot that the elector applied for, or received an absent voter ballot but lost or destroyed it, and wishes to vote in person, the elector must sign an affidavit attesting to this fact before an election inspector. The bill would modify this provision to provide that an individual who did not receive an absent voter ballot, lost or destroyed it, or returned it because the elector believed it would not arrive in time to be counted, would have to notify an election inspector. Upon receiving such a notification, an election inspector would have to determine whether the absent voter's ballot was received and accepted by the clerk. If the electronic poll book did not have live connectivity to the QVF, the bill would require an election inspector to contact the city or township clerk to verify that the absent voter's ballot had not been received or accepted. If either the election inspector or the clerk verified that the ballot mailed to the absent voter was returned to the clerk and accepted, the election inspector could not issue a ballot to the absent voter.

If the clerk verified that the absent voter's ballot had *not* been received and accepted, the clerk would have to immediately cancel the absent voter's ballot in the QVF. After determining that the absent voter's ballot was not received and accepted, an election inspector could issue the absent voter a ballot and permit the absent voter to vote in person.

Upon receiving a returned ballot, the board of election inspectors must mark the absent voter ballot "CANCELED." The bill would change this wording to "SURRENDERED."

Elector Non-Temporary Change of Address

Under the bill, the provisions described below would apply to an elector that had *other than temporarily* moved and changed addresses.

The Law allows a clerk to use change of address information supplied by the United States Postal Service or other reliable information the clerk receives that identifies registered electors who may have changed their address. The bill *also* would allow a clerk to use change of address information supplied by a national change of address vendor approved by the United States Postal Service. Additionally, the bill specifies that the information would have to be specific to the elector and evidence a non-temporary change of address for the information to be considered reliable.

Generally, upon receipt of a change of address *within* a city or township a clerk must 1) inform the elector that the clerk has received evidence that the elector has moved; 2) provide a prepaid return card allowing the elector to verify or correct the information; and 3) request the return of the completed card within 30 days of the next election. An elector that did not return the completed card within that period must vote in the elector's former precinct. The bill would shorten this period from 30 days to 15 days.

The Law allows electors to register to vote in-person at the elector's city or township clerk's office beginning 14 days before an election up until election day. As such, the bill would provide that, if an elector failed to submit a completed card at least 15 days before an election, the elector still could register or update the elector's address in person at the elector's city or township clerk's office beginning 14 days before an election.

Upon receipt of information that an elector has moved to *another* city or township, the clerk must send the elector notice of receipt of that information and a prepaid return card allowing the elector to verify or correct the information. If the information is incorrect the elector must return the card within 30 days of the next election, or that elector may be required to affirm the elector's current address before being allowed to vote. The bill would shorten the return period from 30 to 15 days.

Additionally, if the DoS receives notice that an elector has moved out of State by receipt of a surrendered Michigan driver's license, the SOS must send a notice of receipt of that information and a prepaid return card allowing the elector to verify or correct the information. If the information is not correct the elector must return the card within 30 days before the next election, or else the elector may be required to affirm the elector's address before being permitted to vote. The registration of an elector that did not vote in an election ending the first business day following the second November General Election held after the notice was sent would be cancelled and the elector's name removed from the QVF. The bill would modify, from 30 to 15 days, the period the elector would have to return notice of incorrect information.

Under the bill, the provision above also would apply to an elector for whom the MDOS received information that the qualified elector had failed to vote for at least 20 years. Currently, the Law prohibits a clerk from cancelling a registration solely based on an elector's failure to vote. The bill would specify that this provision would not apply to these circumstances.

In the case of an undeliverable notice, a clerk must identify the registration record of that elector as challenged and must instruct the Board of Election Inspectors to challenge that elector at the first election that elector votes. If the elector does not vote in an election beginning on the date of the notice and ending the first business day following the second November General Election that is held after the notice, the clerk must remove the elector's name from the registration record. The bill would modify this provision to specify that the SOS would instead have to cancel the registration and remove the elector's name from the QVF.

Pre-Election Challenges; Reliable Information Affidavit

The Law allows a registered elector to challenge the voter *registration* of any other registered elector in the same municipality. The bill would specify that a registered elector would have to have personal knowledge that another registered elector was not eligible to vote in the municipality to challenge the voter registration of another elector.

To do so, an elector must submit to the municipality's clerk an affidavit specifying the grounds on which the other elector should be disqualified (see Rights of Challengers; Generally). Upon

receipt of such an affidavit, a clerk must notify the challenged elector, who has 30 days to respond to the challenge. The bill would delete these provisions.

Instead, the bill would allow an elector to challenge the voter registration of another elector registered in the same municipality by submitting to the clerk of that municipality a *reliable information* affidavit. A reliable information affidavit would have to be filed for each challenge and include all the following:

- Where the challenger was registered to vote.
- The name of the challenged elector.
- The specific qualification to vote that the challenged elector did not satisfy.²
- The facts that constituted good cause to believe the challenged elector was not qualified to vote in the municipality.
- When and how the elector submitting the affidavit obtained personal knowledge of the facts that constituted good cause.

A reliable information affidavit could be accompanied by evidence that supported the challenge.

If a clerk determined that an affidavit contained reliable information that an elector did not reside in the city or township where the elector was registered, and the clerk had not independently determined that the elector was qualified to vote, the clerk would have to notify the elector as provided under Elector Non-Temporary Change of Address. If a clerk determined that the reliable information affidavit did *not* contain reliable information, the clerk would have to disregard the challenge.

If a clerk determined that the reliable information affidavit contained reliable information that the elector was not a United States citizen or would not be 18 years of age by the next election, and the clerk had not independently determined that the elector was qualified to vote, the elector would have to verify the elector's qualifications before the elector could vote. If the elector verified the elector's qualifications, the challenge would have to be removed from the elector's registration record.

A challenge to an elector's voter registration would have to be received by the clerk within 90 days of an election. A clerk could not review or act on a reliable information affidavit that was not submitted in compliance with the timeline and provisions described above.

Currently, if an elector does not respond to a notice requesting verification of an elector's qualifications or if a clerk does not independently verify the qualification challenged until the first business day after the second subsequent November General Election, the clerk must cancel the voter's registration and remove the elector's name from the registration record. The bill would maintain this provision and specify that an election official also could not allow a challenged elector that did not respond to a request for verification or was not able to be independently verified to vote.

² Under Section 492, an elector is considered qualified to register to vote in the city or township the individual resides if that individual meets the following requirements: a) is a citizen of the United States; b) is at least 17 and a half years of age; c) is a resident of the State; and d) is a resident of the township or city.

Inactive Voter File

Generally, the SOS and county, city, and township clerks must compile a QVF that contains specific personally identifying information on qualified electors. If an elector is sent a notice to confirm the elector's residence or if an elector does not vote for six consecutive years, the SOS must place the registration in an inactive voter file. That elector's record must remain in an inactive voter file until that elector votes, responds to a notice, or is involved in another voter registration transaction. Under the bill, the elector also would have to remain in the inactive voter file until the elector's registration was canceled.

Currently, if a voter's registration record has been placed in the inactive voter file because the elector was sent a notice to confirm the elector's residence and that elector voted by absentee ballot, that ballot must be marked as a challenge ballot. The bill would delete this provision.

Additional Changes

The Law requires a city or township clerk to post certain notices within their offices. For example, a clerk is required to post a notice of the establishment and location of an election day vote center within the clerk's office. The bill would modify these notice provisions to require a notice posted in a clerk's office to be placed in a conspicuous location.

Currently, if a city or township decides to use absent voter counting boards, the Board of Election Commissioners of that city or township must establish an absent voter counting board for each election day precinct in that city or township. The bill would specify that the decision to use absent voter counting boards would be made by a city or township *clerk*.

Additionally, the Law requires absent voter counting boards and combined absent voter counting boards to process ballots and returns in as nearly as possible the same manner as ballots processed in election day precincts. The bill would adjust this language to specify that absent voter counting boards and combined absent voter counting boards must process ballots in a similar manner as ballots processed in election day precincts.

BRIEF RATIONALE

Challengers play an important role in Michigan elections, helping to identify any mistakes during the processing of election results. Some believe that the Michigan Election Law lacks clarity concerning the role of challengers, which can lead to disruption. For example, during the 2020 election, Detroit's TCF Center, now Huntington Place, was the center of a dispute between election challengers and poll workers. As poll workers processed an unprecedented number of absentee ballots, challengers concerned about voter fraud engaged in disruptive behavior, harassing and distracting poll workers.³ Accordingly, it has been suggested that the Law more specifically prescribe the role and duties of election challengers.

³ Baldas, et al., "'Get to TCF': What really happened inside Detroit's ballot counting center", *Detroit Free Press*, November 6, 2020.

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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.