

Legislative Analysis



ADDRESSING FINDINGS FROM AUDITOR GENERAL REPORT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4127 (H-2) as reported from committee
Sponsor: Rep. Matt Hall

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

House Bill 4128 (H-2) as reported
Sponsor: Rep. Julie Calley

House Bill 4130 as reported
Sponsor: Rep. Matt Koleszar

House Bill 4129 as reported
Sponsor: Rep. Steve Marino

House Bill 4131 (H-3) as reported
Sponsor: Rep. Terry Sabo

Committee: Elections and Ethics
Complete to 3-3-21

BRIEF SUMMARY:

The Michigan Office of the Auditor General (OAG) conducts periodic performance audits of state government operations. In December 2019, the OAG released its most recent performance audit¹ of the Bureau of Elections, which included three *reportable conditions*,² or less severe issues, and one *material condition*,³ or more severe issues. The bills aim to address the three reportable conditions, as described in **Background**, below.

House Bills 4127 and 4128 would amend the Michigan Election Law to require the Michigan Secretary of State (SOS) to remove from the qualified voter file (QVF) voters who do not respond to a mailing notifying them that they have “placeholder” birthdates in the QVF, or that they have not voted since the 2000 general November election, and that failure to respond will result in their removal.

House Bill 4129 would amend the Election Law to require the SOS to post on the SOS website in odd-numbered years the names of clerks who have not completed the required training.

House Bill 4130 would amend the timing for filing of lobbyists’ reports in 1978 PA 472, known as the lobbyist registration act.

House Bill 4131 would amend the timing in the Campaign Finance Act for correction of errors and omissions in a filed campaign statement or report.

¹ <https://audgen.michigan.gov/wp-content/uploads/2019/12/r231023519.pdf>

² The OAG defines a *reportable condition* as a matter that, in the auditor’s judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.

³ The OAG defines a *material condition* as a matter that, in the auditor’s judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. The assessment of materiality is in relation to the applicable audit objective.

DETAILED SUMMARY:

House Bill 4127

Currently, section 510 of the Election Law requires the county clerk to forward a list of adults who have died in the county to city and township clerks, who would then cancel the registration of deceased electors.

The bill would also require the SOS, within 90 days of the bill's effective date, to send both of the following to each registered elector who has been assigned a placeholder date of birth on the QVF because the actual date of birth is unknown:

- A postage prepaid return card preaddressed to the elector's city or township clerk on which the elector may verify his or her birthdate. He or she would have to sign the card and attach a copy of his or her original birth certificate or current driver's license or state personal ID card as proof of date of birth.
- A notice that the elector must complete, sign, and return the enclosed card, including the date of birth and proof of date of birth, at least 15 days before the next election; that he or she may otherwise be required to affirm the date of birth in writing before being allowed to vote; and that failure to do so will result in the cancellation of his or her registration following the second general November election after the notice.

An elector returning the completed and signed card in person would also have to provide proof of date of birth.

Until an elector returned the completed and signed return card, and the signature was verified by the city or township clerk using the QVF, the elector's registration would be identified as challenged. The clerk would have to notify the elector of the challenged status and the steps necessary to resolve the issue. Likewise, if the mailings were returned as undeliverable, the bill would require the SOS to identify that elector's registration record as challenged. Then, if the elector did not vote or engage in voter-initiated activity or verify the birthdate within two general November elections, the SOS would have to cancel the elector's registration and notify the applicable city or township clerk of the cancellation.

MCL 168.510

House Bill 4128

Currently, the Election Law provides that an elector's voter registration may not be canceled based solely on a failure to vote.

The bill would instead require the SOS to cancel the elector's registration if he or she did not reply to the notice described below or engage in voter-initiated activity by the second general November election after the notice.

The notice would state that the SOS's records indicate that the voter has not voted since the 2000 general November election and that the voter must fill out, sign, and return the enclosed card to the applicable city or township clerk if he or she wishes to remain registered to vote at that address. Further, it would indicate that the voter would have to do so at least 15 days before the next election; that he or she may otherwise be required to affirm his or her current address

before being allowed to vote; and that failure to do so will result in his or her registration being canceled following the second general November election after the notice

Then, as under HB 4127, if the notice was returned as undeliverable or if the signature did not match the QVF, the bill would require the SOS or clerk, respectively, to identify that elector's registration record as challenged. The clerk would also have to notify the elector of a challenged status based on a non-matching signature and inform the elector of the steps needed to resolve it. Then, if the elector did not vote or engage in voter-initiated activity within two general November elections, the SOS would have to cancel the elector's registration and notify the applicable city or township clerk of the cancellation.

MCL 168.509bb

House Bill 4129

The bill would amend the Election Law to require the SOS to post on the SOS website, by July 1 of odd-numbered years, the name of each county, city, and township clerk who is not current with his or her continuing election education training required under the code, and to remove that name upon receiving evidence that the clerk has become current. The SOS would have to notify delinquent clerks by June 1 of odd-numbered years, and remove from the list those who remedy the delinquency before July 1.

Proposed MCL 168.33a

House Bill 4130

Currently, the lobbyist registration act requires a lobbyist or lobbyist agent to file reports detailing expenditures and financial transactions one month after the period that is covered by the report ends—on January 31 for the previous calendar year, and on August 31 for the seven-month period from the preceding December 31 to July 31.

The bill would revise the time periods and move both filing deadlines back by one month—so, February 28 for the preceding August 31 to January 31 and September 30 for the preceding January 31 to August 31.

For the report to be filed on September 30, 2021, the report would have to cover the preceding December 31 to August 31.

MCL 4.418

House Bill 4131

Currently, for statements and reports required under the Campaign Finance Act, a filing official determines whether the statement or report complies with the act and rules and notifies the filer of any errors or omissions within four business days after the filing deadline. Additionally, the filing official notifies people the official believes are required to file of a failure to file within four business days of the filing deadline.

The bill would extend these notice requirements to 30 business days after the filing deadline. If a notice of error or omission had not been given in that time period, the statement or report would be considered filed, even if it is later amended.

The bill also would extend the deadline for submitting the corrected statement or report (or the initial statement or report if the person did not file by the initial deadline) to 35 business days after the initial deadline. (Currently the deadline is nine business days after the initial deadline.) The official would have to notify the filer within 10 days of receiving the corrected statement whether the corrections were sufficient.

Finally, where the filing official must now report to the attorney general uncorrected errors or omissions, and failures to file, between 9 and 12 business days after the initial deadline, the bill would change that time period to 35 to 38 business days after the initial deadline.

MCL 169.216

BACKGROUND:

The findings from the OAG audit, and the bills that address those findings, are described below.

Finding #1: BOE should improve control procedures over QVF to help decrease the risk of ineligible electors voting in Michigan.

The auditor general identified 230 registered electors who had an age that was greater than 122 years, the oldest officially documented person to ever live. Specifically, the OAG noted:

With regard to individuals recorded in the QVF with an age greater than 122 years, BOE notes that in most of these cases, further follow-up is needed with the voter to confirm his/her actual date of birth; and thus these individuals do not actually have “an age greater than 122 years.” It is impossible to have a “blank” in the QVF date of birth field. Individuals with no recorded date of birth have been deliberately coded with an implausible birth date (such as 5/5/1850) to more clearly indicate records needing further follow-up.

HBs 4127 and 4128 would require the SOS to remove voters with a “placeholder” birthdate and those who have not voted since 2000 if they do not respond to the required mailing or participate in voter-initiated activity within two general November elections.

Finding #3: Election Officials had not completed the required training to obtain or retain accreditation in 14% of counties, 14% of cities, and 23% of townships.

HB 4129 would require the SOS to post on the SOS website in odd-numbered years the names of clerks who have not completed the required training.

Finding #4: BOE’s review was not timely for 79%, 42%, and 67% of the campaign statements, lobby reports, and campaign finance complaints, respectively, that we selected for the audit.

HBs 4130 and 4131 would amend the filing timelines currently in place under the lobbyist registration act and the Campaign Finance Act.

Of note, although not addressed in the bills, the material finding concerned access to the QVF:

Finding #2: BOE needs to improve its access controls over QVF Refresh to help prevent and detect inappropriate access and protect elector information from unauthorized use, disclosure, modification, or destruction.

In testimony before the Senate Oversight committee on February 5, 2020, representatives of the Department of Technology, Management, and Budget (DTMB) testified that the unauthorized access was an isolated incident in which an employee transferred positions within DTMB and inadvertently retained access to the QVF. As the employee had been asked to consult, if needed, the employee logged on a few times to determine if there was continued access. According to testimony, this oversight was remedied and all employees (including those who may transfer within state employment) lose access upon leaving the team.

The bills are reintroductions of House Bills 6177 to 6181 of the 2019-20 legislative session.⁴ Those bills were referred from the House Elections and Ethics committee and reported from the House Committee on Ways and Means.

BRIEF DISCUSSION:

In committee testimony, some who had formerly supported the bills as proper implementation of the OAG's recommendations questioned the inclusion in the H-1 substitutes to HBs 4127 and 4128 of a signature requirement and additional documentation requirements. They argued that birthdate discrepancies addressed in HB 4127 are generally due to clerical errors and are not the voter's fault; it is unfair to require the voter to submit a copy of a birth certificate, when some do not have them readily available, in order to avoid going on challenged status. Additionally, they argued that the signature requirement is unnecessary, as the signature is already checked on a person's absentee ballot. Moreover, it represents another hurdle for voters and another time-consuming step for clerks.

In response, supporters argued that the additional requirements are necessary to ensure voter confidence in the election.

H-2 substitutes to HBs 4127 and 4128 were adopted in committee and require the local clerk to notify a voter if the signature on the return card does not match and the elector has accordingly been placed on challenged status and of the steps the elector can take to be removed from challenged status.

FISCAL IMPACT:

House Bills 4127 and 4128 would result in additional administrative costs for the Department of State (DOS) related to the expense of mailing return cards with prepaid and preaddressed postage. DOS reports that there are 304,792 registered electors in the QVF who have not voted since 2000 and 547 registered electors who have unknown, or placeholder birthdates. Of the electors with placeholder birthdates, 416 have not voted since 2000, bringing the total number of mailings required by the bill to 304,923.

⁴ House Fiscal Agency analysis of HBs 6177 to 6181: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-6177-8CBA9B18.pdf>

Data on department printing and mailing costs of prepaid and preaddressed postage was not available from DOS at the time of this analysis. The Department of Technology, Management, and Budget reports the mailing service rate for presorted mail to be 32 cents per piece. This is also the reported cost to DOS of mailing informational postcards to voters during the 2020 election cycle. Assuming mailing costs to be the same under the bill for estimating purposes, the bill is estimated to cost approximately \$100,000 with the cost of printing added. However, the cost of prepaid return cards is likely greater than 32 cents per piece, and final costs would likely exceed this estimate.

House Bills 4129 to 4131 would have no fiscal impact on the state or local units of government.

POSITIONS:

The League of Women Voters indicated support for HBs 4127, 4128, and 4129. (2-15-21)

A representative of the Department of State testified in opposition to HBs 4127 (H-1) and 4128 (H-1). (2-23-21)

The following entities indicated opposition to the H-1 substitutes to HBs 4127 and 4128 (2-23-21):

ACLU of Michigan

Michigan League of Conservation Voters

American Association of University Women of Michigan

The Michigan Municipal League indicated opposition to HB 4129. (2-23-21)

Legislative Analyst: Jenny McInerney

Fiscal Analyst: Michael Clossen

■ 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.