

Legislative Analysis



PROHIBIT INTIMIDATION OF OR INTERFERENCE WITH ELECTION WORKERS

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House Bill 4129 as enrolled
Sponsor: Rep. Kara Hope
House Committee: Elections
Senate Committee: Elections and Ethics
Complete to 11-30-23

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

(Enacted as Public Act 253 of 2023)

SUMMARY:

House Bill 4129 would make it illegal to intimidate an election official or otherwise prevent election officials from performing their duties.

The bill would add a new section to the Michigan Election Law to provide that an individual who prevents an *election official* from performing their duties in conducting an election or who *intimidates* an election official because of their status as an election official with the specific intent to interfere with the official's duties is guilty of a crime.

Election official would mean a public officer, public employee, election inspector, member of the Board of State Canvassers, member of a board of county canvassers, member of an absent voter counting board, county clerk, or city or township clerk who has a duty to perform in connection with an election conducted under the Michigan Election Law.

Intimidate would mean a willful course of conduct involving harassment of another individual that is intended to cause the individual to fear physical injury, that would cause a reasonable individual to fear physical injury, and actually causes the individual to fear physical injury. It would not include constitutionally protected activity or conduct that serves a legitimate purpose.

The bill's provisions would not apply to any constitutionally protected activity, such as reporting, protesting, lobbying, advocacy, or other activities intended to inform or influence on matters of public interest or concern.

A first violation of these provisions would be a misdemeanor punishable by up to 93 days' imprisonment or a fine of \$500, or both. A second violation would be a misdemeanor punishable by up to one year's imprisonment or a fine of \$1,000, or both. A third or subsequent violation would be a felony punishable by up to five years' imprisonment or a fine of up to \$1,000, or both, as provided under section 935 of the act.

Proposed MCL 168.931b

FISCAL IMPACT:

House Bill 4129 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations could be either misdemeanors or felonies, depending on the circumstances. First and second offenses would be misdemeanors and third and subsequent offenses would be felonies. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

Supporters of the bill argue that these protections are necessary to address understaffing in clerk's offices, since election officials have increasingly faced threats and harassment while performing their duties and many have indicated that they will not return to work at future elections.¹ Specific legislation to protect election workers from intimidation and interference would ensure that election workers feel safe while at work and would help retain experienced staff so that elections can run smoothly.

Opponents of the bill argue that the bill is unnecessary because there are already sufficient laws in place to protect all individuals, not just election workers, from intimidation and assault. They also raise concerns that the bill's provisions are too subjective and could be taken advantage of by someone who feels, but is not actually, intimidated or harassed by another person's behavior at a polling place. A better solution would be to use current laws to prosecute and deter instances of intimidation.

POSITIONS:

Representatives of the following entities testified in support of the bill (9-12-23):

- Department of State
- Campaign Legal Center
- Michigan Association of Municipal Clerks

¹ Information from this Brennan Center for Justice report on election worker safety was referenced during committee testimony: <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>.

The following entities indicated support for the bill:

- Department of the Attorney General (2-28-23)
- American Association of University Women of Michigan (9-12-23)
- Center for Change Northern Michigan (2-28-23)
- League of Women Voters of Michigan (9-12-23)
- Michigan Democratic Party (2-28-23)
- Michigan Municipal League (9-12-23)
- Michigan Townships Association (2-28-23)
- Progress Michigan (2-28-23)
- Promote the Vote (9-12-23)
- Voters Not Politicians (9-19-23)

The Michigan League of Conservation Voters indicated a neutral position on the bill. (9-12-23)

A representative of Pure Integrity for Michigan Elections testified in opposition to the bill. (9-12-23)

Detroit Disability Power indicated opposition to the bill. (2-28-23)

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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.