

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 367 (Senator Jacobs)
Education, Health, and Environmental Affairs

Election Law - Petitions - Confidentiality

This bill prohibits, under the Election Law Article, the public inspection of a petition once the petition is filed with the appropriate election authority, with one exception specified under State law governing access to public records. Under State law governing access to public records, the bill requires that a custodian deny inspection of a petition after the petition is filed with the State Board of Elections (SBE) or a county board of elections unless a person requires access to the petition to facilitate specified judicial review of a determination concerning the sufficiency of the petition. The bill specifies that the requirement that a person requiring access to a petition to facilitate judicial review be permitted to inspect the petition does not authorize a custodian to disclose personal information in a petition to the general public.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: None. The bill does not directly affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: When signing a petition, an individual must provide the individual's name and address on the petition. SBE regulations also require a petition circulator to ask each signer to also provide a date of birth or, at a minimum, month and day of birth, though failure to provide birth information does not invalidate a signature.

Under State law governing access to public records, except as otherwise provided by law, a custodian must permit a person or governmental unit to inspect any public record at any reasonable time. A custodian of a public record is required to deny inspection of a public record in various cases, however, including for various specific types of records and types of information specified in the law. There is no restriction on public access to a petition, however, in these provisions.

“Custodian” means the official custodian (officer or employee of the State or of a political subdivision who is responsible for keeping the public record, whether or not they have physical custody and control of the record) or any other authorized individual who has physical custody and control of a public record.

“Public record” means the original or any copy of any documentary material that is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business.

SBE regulations contain procedures for the inspection and copying of SBE and local board of elections public records. Consistent with State law governing access to public records, the regulations generally require public records in the custody of SBE or a local board of elections to be made available for inspection, though require a written request and response where State law governing access to public records or any other law or regulation might require or authorize the custodian to deny inspection of the record or specific information in the record. Outside of any specific authorization for denial of inspection, a custodian may temporarily deny inspection and seek court approval for continued denial if the custodian believes that inspection would cause substantial injury to the public interest. One piece of information that is made explicitly not subject to public disclosure under the SBE regulations is an individual’s personal identification number (Motor Vehicle Administration identification number or Social Security number).

SBE regulations allow certain types of individuals (law enforcement personnel, persons being threatened, and others) to request to have their residence addresses, telephone numbers, and email addresses contained in registration records, certificates of candidacy, or statements of organization to form a campaign finance entity to be designated as confidential and precluded from public disclosure.

Background: SBE indicates that petitions are treated by SBE and local boards of elections as public records available for inspection, upon the completion of the petition verification process. Various uses of petitions under State law are shown in the attached **Appendix – Uses of Petitions under State Law**, along with the signature requirement and the constitutional or statutory authority for each use.

Additional Information

Prior Introductions: SB 91 of 2012 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 27, received a hearing in the House Ways and Means Committee, but no further action was taken on the bill.

Cross File: HB 729 (Delegate Parrott, *et al.*) - Ways and Means.

Information Source(s): State Board of Elections, Montgomery and Wicomico counties, Baltimore City, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2013
mc/hlb

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Appendix – Uses of Petitions under State Law

<u>Purpose</u>	<u>Required Signatures</u>	<u>Authority</u>
State law referendum	3% of qualified voters of the State (except for a public local law for any one county or Baltimore City, which requires 10% of the qualified voters of the jurisdiction)*	Maryland Constitution, Article XVI
Formation of new political party	10,000 registered voters	Maryland Code, Election Law Article, § 4-102
Nomination of unaffiliated candidate for general election	1% of registered voters eligible to vote for the office sought, but not less than 250 signatures	Maryland Code, Election Law Article, § 5-703
Placement of presidential candidate on primary election ballot**	400 registered voters from each congressional district in the State	Maryland Code, Election Law Article, § 8-502
Local Referendum (Charter County)	Set in charter	Maryland Code, Article 25A, § 8
Local Referendum (Code County)	10% of registered voters of the county	Maryland Constitution, Article XI-F, § 7; Maryland Code, Article 25B, § 10
Creation of a charter board	20% of registered voters of the county under § 1 or 5% under § 1A, but in both cases not more than 10,000 signatures is required	Maryland Constitution, Article XI-A, §§ 1 and 1A
Nomination of charter board members	5% of registered voters of the county under § 1 or 3% under § 1A, but in both cases not more than 2,000 signatures is required	Maryland Constitution, Article XI-A, §§ 1 and 1A
Charter amendment	20% of registered voters of the county, but not more than 10,000 signatures is required	Maryland Constitution, Article XI-A, § 5

Note: Additional uses of petitions, such as for incorporation of a municipality or amendment of a municipal charter, are not included.

*“Qualified voters” means the number of votes cast for Governor at the last preceding gubernatorial election. In 2013, the 3% requirement equals 55,736 signatures.

**For Democratic or Republican presidential primary candidates who are not recognized and certified by the Secretary of State to be on the ballot.