

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1314 (Delegate Mosby, *et al.*)
 Ways and Means

Election Law - Voting Systems - Accessibility for Voters With Disabilities

This bill establishes certain voting requirements to ensure that voters with disabilities are provided specified access to voting that is equivalent to access afforded voters without disabilities. Each voter is required to use a ballot marking device that is accessible to voters with disabilities to vote at an early voting center or an Election Day polling place. In addition, a ballot cast by a voter with a disability may not be set apart or distinguishable, in size and form, from a ballot cast by a voter without a disability. These requirements apply to all elections beginning with the 2022 statewide primary election.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$5.5 million in FY 2022, by at least \$5.4 million in FY 2023 and 2024, and by at least \$5.0 million annually thereafter. Revenues are not affected.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|---------|---------------|---------------|---------------|---------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 0 | 5,500,000 | 5,400,000 | 5,400,000 | 5,000,000 |
| Net Effect | \$0 | (\$5,500,000) | (\$5,400,000) | (\$5,400,000) | (\$5,000,000) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government expenditures increase, collectively, by at least \$5.5 million in FY 2022, by at least \$5.4 million in FY 2023 and 2024, and by at least \$5.0 million annually thereafter. Additional costs, varying by county, are also incurred. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: State law requires the State's voting system to (1) provide access to voters with disabilities that is equivalent to access afforded voters without disabilities without creating a segregated ballot for voters with disabilities; (2) ensure independent, private casting, inspection, verification, and correction of secret ballots by voters with disabilities in an accessible media by both visual and nonvisual means, including synchronized audio output and enhanced visual display; and (3) comply with the Americans with Disabilities Act and the Help America Vote Act. At least one voting system in each polling place on Election Day must provide access for voters with disabilities in compliance with the above requirements.

Background:

Current Use of Ballot Marking Devices

The State's voting system includes ballot marking devices, which allow voters to use a touchscreen to produce a paper ballot containing the voter's choices (to then be fed into a ballot scanner/tabulator) and offer accessibility features for voters with disabilities. Because of concerns that arose prior to the 2016 elections about the limited number of candidate names that could be displayed on a single screen and the logic associated with navigating within and between contests, the State Board of Elections (SBE) limited the extent to which the ballot marking devices were made available to voters in the 2016 elections. Concerns about the functionality of the ballot marking devices were not resolved in time for the 2018 elections and the same policy implemented in the 2016 general election was continued for the 2018 elections. That policy generally limited the use of the ballot marking devices but still made them available as an accessible option for voters and required election judges to make sure that at least two voters used a ballot marking device during a voting day.

SBE has updated the ballot marking device policy for the 2020 elections, which includes (1) requiring at least one ballot marking device to be deployed at each polling place and early voting center; (2) allowing for up to two ballot marking devices to be deployed at each polling place and up to four at each early voting center, and requiring a local board of elections to ask SBE to allow it to deploy additional ballot marking devices beyond those limits; (3) requiring that a minimum of five voters use the ballot marking device(s) at each voting location and that election judges try to meet that minimum by 1 p.m.; (4) requiring increased election judge training regarding notifying voters of the option to use ballot marking devices; and (5) requiring an updated statement to be given by an election judge to a voter, notifying them that they have two ways to mark their ballot – by hand or with the electronic device – and asking which they prefer. A software upgrade that

was expected to address the concerns about the functionality of the ballot marking devices was not able to be implemented in time for use in the 2020 elections.

National Federation of the Blind, Inc. v. Lamone

The National Federation of the Blind (NFB) filed a lawsuit in the U.S. District Court for the District of Maryland in August 2019 against the State Administrator of Elections and members of SBE seeking (1) a declaratory judgment that the defendants have violated and continue to violate Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 by denying blind individuals an equal opportunity to vote in person by secret ballot and (2) a permanent injunction requiring SBE, in all future elections, to offer ballot marking devices to every in-person voter as the default method of voting, with paper ballots offered only to those voters who affirmatively opt out of using the ballot marking device or in cases where there are long lines of people waiting to vote.

Subsequently, in September 2019, SBE filed a motion to dismiss the suit and NFB filed a motion for a preliminary injunction, seeking an order requiring SBE to offer ballot marking devices as the default voting option to all Maryland voters in time for the 2020 general election. In February 2020, the court denied both motions. In denying the motion to dismiss, the court determined that (1) NFB had plausibly alleged a violation of ADA and Section 504 of the Rehabilitation Act and (2) the relief sought regarding the use of ballot marking devices was plausibly reasonable. However, in denying the motion for a preliminary injunction, the court determined that (1) NFB was not likely to succeed in demonstrating that the ballot marking device policy sought was reasonable and (2) SBE was likely to succeed in establishing that that policy would impose an undue burden on SBE and the local boards of elections.

State Fiscal Effect: General fund expenditures increase by at least \$5.5 million in fiscal 2022, by at least \$5.4 million in fiscal 2023 and 2024, and by at least \$5.0 million annually thereafter, reflecting:

- the State's share of costs to (1) lease sufficient numbers of ballot marking devices (approximately 18,000 more than the 3,500 currently leased) for all voters to cast ballots on in the 2022 and future elections (\$4.8 million annually); (2) increased costs for transporting voting equipment to and from voting locations (\$0.7 million annually); (3) the cost of equipment carts in which to transport the additional ballot marking devices (\$0.4 million annually for three years, financed); and (4) acceptance testing of the additional ballot marking devices (\$0.1 million in fiscal 2022 only); and
- the State's share of an estimated decrease in ballot costs resulting from using the ballot cards associated with ballot marking devices (which are smaller and not

pre-printed) in place of the paper ballots that are marked by hand (a \$0.5 million average annual decrease in expenditures).

SBE shares voting system costs with the local boards of elections pursuant to Chapter 564 of 2001.

The estimate of the cost of the ballot marking devices is based on the cost of the devices under the State's current voting system, the contract for which ends after the 2020 elections. Actual voting system costs associated with this bill may vary from this estimate depending on how costs of the statewide voting system change for the 2022 and future elections.

The estimate does not account for certain costs identified in filings in *NFB v. Lamone*. (The cost of providing ballot marking devices for all voters to vote on was focused on in the consideration of NFB's motion for a preliminary injunction.) SBE identified additional costs such as (1) printers that print the ballot access card used in a ballot marking device and (2) tables or stands for the ballot marking devices to rest on while voters vote. Those costs have not been quantified in this estimate due to uncertainty about their magnitude and about whether those costs may be mitigated to at least some extent by vendor discounts resulting from the large volume of ballot marking devices the State would be acquiring. In an SBE filing in the case, however, those costs are quantified at \$2.2 million annually, for the printers, and \$1.9 million annually, for the tables. Those costs would be shared, 50/50, by SBE and the local boards of elections.

Local Fiscal Effect: Local government expenditures increase, collectively, by at least \$5.5 million in fiscal 2022, by at least \$5.4 million in fiscal 2023 and 2024, and by at least \$5.0 million annually thereafter, reflecting the local boards of elections' share of the costs identified above under the State Fiscal Effect section. As mentioned above, this estimate is based on the costs of ballot marking devices under the State's current voting system, the contract for which ends after the 2020 elections, and the estimate does not account for certain additional costs identified by SBE.

Local boards of elections are also expected to have additional increased costs, varying by county, associated with the additional ballot marking devices, such as storage costs and costs for information technology personnel to test, prepare, troubleshoot, and maintain the additional ballot marking devices. Washington County, for example, indicates that additional information technology personnel are needed, at a cost of \$156,000 annually, and a new facility may need to be rented in place of current county space in order to store the ballot marking devices. Anne Arundel County indicates that it will need to spend \$1.2 million to build additional storage infrastructure into the local board of elections' existing facility to store and manage the additional ballot marking devices. The county may also need to rent additional space. In a filing in *NFB v. Lamone*, SBE estimated that,

collectively, 60,500 square feet of additional storage space would be needed by local boards of elections to accommodate the additional ballot marking devices, at a cost of approximately \$850,000 annually if all of the additional square footage is rented from private owners.

Additional Information

Prior Introductions: HB 565 of 2019 received a hearing in the House Ways and Means Committee and was referred to interim study. Its cross-file, SB 363, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Designated Cross File: SB 757 (Senator Lam, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Elections; Anne Arundel, Garrett, Montgomery, and Washington counties; U.S. District Court, District of Maryland; Department of Legislative Services

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mr/hlb

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