

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 831 (Senator Kagan)
 Education, Health, and Environmental Affairs

Election Reform Act of 2021

This bill makes various changes to State election law relating to the State and local boards of elections, party affiliation, candidate debates, nomination of circuit court judge candidates, ballot questions, ballot arrangement, absentee voting, ballot drop boxes, early voting, and election results reporting.

Fiscal Summary

State Effect: General fund expenditures increase by \$238,000 in FY 2022 and by ongoing, but varying, amounts in future years, accounting for quantified costs. Additional costs, which have not been quantified at this time, may be incurred, as discussed below. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	238,000	131,800	276,400	127,000	247,200
Net Effect	(\$238,000)	(\$131,800)	(\$276,400)	(\$127,000)	(\$247,200)

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

Local Effect: Local government expenditures increase significantly beginning in FY 2022, as discussed below. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The bill makes various changes to State election law. Specifically, the bill

- (1) establishes requirements relating to the public availability of meeting minutes and other State Board of Elections (SBE) meeting materials on SBE's website;
- (2) establishes requirements – applicable to local boards of elections – for live video streaming of meetings, video archiving, and posting of meeting minutes and other meeting materials online (similar to requirements applicable to SBE);
- (3) redefines “majority party” and “principal minority party” under provisions governing the composition of local boards of elections, so that “majority party” and “principal minority party” are determined by the amount of registered voters in the county that are affiliated with each party rather than by the party to which the incumbent Governor belongs;
- (4) allows a registered voter who has declined to affiliate with a political party to change to a party affiliation at any time an individual may register to vote;
- (5) requires each candidate (except an unopposed candidate) for Governor, U.S. Senator, and Representative in Congress to participate in at least one public debate before the primary election and, if applicable, the general election;
- (6) establishes a Maryland Debate Commission, staffed by SBE, to develop guidelines for the conduct of debates, establish debate criteria, and host debates before each primary and general election for candidates for Governor, Lieutenant Governor, Attorney General, Comptroller, and members of Congress;
- (7) establishes plain language requirements for ballot question summaries included on petitions and on the ballot;
- (8) establishes that, in a primary election to nominate candidates for judge of the circuit court, any registered voter of the county, regardless of party affiliation or lack of party affiliation, is eligible to vote in those contests for nomination;
- (9) requires that candidates for a single office appear on the same page of a paper ballot; or either on the same page of the ballot shown on the screen of an electronic voting device, or on more than one screen as long as a voter is not allowed to select all the candidates for that office until the voter views or hears all the names of candidates for that office;

- (10) establishes that SBE may not certify a voting system unless it determines that the voting system will enable, to the extent practicable, a voter to view all candidates for a single office on the same page or screen before casting a vote;
- (11) requires specified additional identification information to be provided on the absentee ballot application approved by SBE, the same information required for an online absentee ballot application or a request to receive a blank absentee ballot through the Internet;
- (12) establishes requirements related to the sufficiency of absentee ballot applications and absentee ballots, including notification of a voter of an error, the ability of the voter to correct the error, procedures to follow if two legally sufficient ballots in separate envelopes are received from the same individual, and the sufficiency of a ballot not returned using specified envelopes and, if applicable, a privacy sleeve;
- (13) eliminates the ability of a voter to receive an absentee ballot through the Internet unless the voter is a specified uniformed services or overseas voter, a voter with a disability who is unable to mark a ballot independently by hand, or any other voter who would be unable to vote if they could not receive an absentee ballot electronically;
- (14) establishes that language or information that visibly identifies the party affiliation of a voter may not be included on an outgoing absentee ballot envelope, and language or information that visibly identifies the address, the party affiliation, or the zip code of a voter may not be included on an absentee ballot return envelope or an absentee ballot return envelope template provided by a local board of elections to a voter who is sent an absentee ballot through the Internet or by fax;
- (15) requires that, if a local board of elections uses only two envelopes (an outgoing envelope and ballot/return envelope) instead of three envelopes (an outgoing envelope, return envelope, and ballot envelope), a privacy sleeve that encases the absentee ballot and fits inside the ballot/return envelope must be used;
- (16) requires each local board of elections to designate locations in the county at which a ballot drop box will be placed, including one at each early voting center;
- (17) prohibits a person from placing a box that may be used to collect completed absentee ballots unless the box is officially designated as a ballot drop box by a local board and the person has been directed by the local board to place the box;

- (18) establishes that a voter in line to deposit an absentee ballot at a ballot drop box by the closing hour of polling places must be allowed to deposit the absentee ballot;
- (19) requires that each local board, in collaboration with SBE, ensure that early voting centers are geographically dispersed throughout the county so that not less than 80% of the registered voters in the county live within a five-mile radius of an early voting center;
- (20) shifts the timing of the early voting period so that it begins the second Monday before an election and ends the Monday immediately preceding the election instead of beginning the second Thursday before the election and ending the Thursday before the election;
- (21) increases the hours an early voting center is open by requiring that early voting centers be open for voting between 7:00 a.m. and 8:00 p.m. each early voting day;
- (22) allows a local board of elections to begin opening absentee ballot envelopes, to canvass the ballots, at 8:00 a.m. on the day that is 15 days before Election Day, replacing the current start time of 8:00 a.m. on the Wednesday following Election Day; but also prohibits a person from releasing a partial or complete tabulation of absentee votes before the closing of the polls on Election Day; and
- (23) requires that local boards of elections' and SBE's reports of election results by precinct include the early, absentee, and provisional vote.

Current Law: State election law provisions and/or SBE regulations:

- require SBE to make meeting agendas and minutes, and live streaming and archived video of meetings, publicly available on its website, in a specified manner;
- govern the composition of local boards of elections, specifying numbers of members that must be of the majority party or principal minority party, with "majority party" generally meaning the political party to which the incumbent Governor belongs;
- do not allow a party affiliation change to be processed for an election if it is not submitted before voter registration closes for the election; with the exception of same day registration during early voting and on Election Day, registration is closed from the twenty-first day preceding an election until the eleventh day after the election;

- require a petition that seeks to place a question on the ballot to contain a fair and accurate summary or the full text of the proposal, and require a ballot to contain a condensed statement of the purpose of a ballot question;
- allow for candidates for circuit court judge to be nominated for the general election by the Democratic and Republican parties in the primary election, and candidates “cross-file,” appearing on both the Democratic and Republican primary election ballots, needing to win on only one;
- require that, whenever possible, the entire listing of a contest be printed on one side of the ballot page;
- require that a voter who uses the online absentee ballot application to request that an absentee ballot be sent by any method or who uses any method to request to receive a blank absentee ballot through the Internet, provide additional identification information;
- require, if an absentee ballot application is timely but any of the required information is missing, that the election director of the local board of elections attempt to contact the voter to correct the omission;
- require a local board to reject an absentee ballot under specified circumstances, including if the voter failed to sign the oath on the ballot envelope, and require a local board, if it receives more than one legally sufficient ballot in separate envelopes from the same individual, to count only the ballot with the latest properly signed oath;
- allow a voter to receive an absentee ballot by mail, by fax, through the Internet, or by hand at a local board of elections office;
- require a local board of elections to use either two absentee ballot envelopes (“outgoing envelope” and “ballot/return envelope”) or three envelopes (“outgoing envelope,” “return envelope,” and “ballot envelope”) and, if an absentee ballot is sent by the Internet or fax, the local board must provide the voter with an envelope template;
- establish that on an election day, a polling place is open from 7:00 a.m. to 8:00 p.m., and a voter who has appeared at a polling place by the closing hour to cast a ballot must be allowed to vote;

- require local boards, in seeking approval of proposed early voting centers from SBE, to show (1) in the case of a county with one early voting center, that the early voting center is located so that 50% of the registered voters in the county live within 10 miles of the proposed center and (2) in the case of a county with specified greater numbers of early voting centers, the centers are located so that 80% of the registered voters live within five miles of one of the proposed centers;
- require each early voting center to be open for voting from the second Thursday before a primary or general election through the Thursday before the election, and in a presidential general election, from 8:00 a.m. to 8:00 p.m. each early voting day, and in all other elections, from 10:00 a.m. to 8:00 p.m. each early voting day;
- prohibit a local board of elections from opening any envelope of an absentee ballot prior to 8:00 a.m. on the Wednesday following Election Day; and
- require local boards of elections and SBE to make election results available by precinct, but prohibit a statement prepared by a local board from reporting the absentee vote separately by precinct.

State Fiscal Effect:

Quantified Costs

Costs of the bill incurred by the State (general funds) that are able to be quantified at this time are shown in **Exhibit 1**.

Exhibit 1
Quantified General Fund Costs of the Bill

	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>
Affiliation with a party during early voting and Election Day (ballot costs) (provision 4, above)	\$106,500		\$142,000		\$106,500
Maryland Debate Commission (SBE staff) (provision 6)	71,000	\$83,800	86,400	\$89,500	92,700
Circuit court judge primary open to any voter (programming and ballot costs) (provision 8)	45,000	32,500	32,500	32,500	32,500
Additional early voting hours (voting system support personnel) (provision 21)	15,500	15,500	15,500	5,000	15,500
Total	\$238,000	\$131,800	\$276,400	\$127,000	\$247,200

Additional Costs

The following additional costs (that are not able to be quantified at this time) may be incurred:

- **Limitation on the Ability of a Voter to Receive a Mail-in Ballot through the Internet** (provision 13) – General fund expenditures increase by approximately \$0.68 for each mail-in ballot that is no longer sent to a voter through the Internet as a result of the bill, reflecting a shift in costs from local board personnel costs associated with canvassing of mail-in ballots sent to voters through the Internet, to costs of instead mailing ballots to voters, a cost shared by SBE and the local boards.
- **Prohibition on Party Affiliation Information Appearing on Absentee Ballot Envelopes** (provision 14) – General fund expenditures may increase by up to \$16,000 in fiscal 2022 only, for programming of SBE’s election systems to

reconfigure the way that ballot styles are identified (the ballot style identification is included on absentee ballot envelopes in order to match the correct ballot style with a voter's outgoing absentee ballot envelope), so that they do not include an indication of party affiliation.

- **Privacy Sleeve Included with Mail-in Ballot Envelopes** (provision 15) – General fund expenditures may increase to the extent that including a privacy sleeve with mail-in ballots increases the cost of printing and mailing the ballots, a cost shared by SBE and the local boards of elections.
- **80% of Registered Voters within a Five-mile Radius of an Early Voting Center** (provision 19) – To the extent the bill may require a county to use the option under current law to establish one additional early voting center in order to meet the bill's requirement that 80% of registered voters live within a five-mile radius of an early voting center, general fund expenditures increase by at least approximately \$6,000 annually per additional early voting center established, reflecting the State's share of voting system costs associated with an early voting center.

This fiscal and policy note assumes that policies implemented in 2020 relating to ballot drop boxes and reporting of election results by precinct are largely continued in future elections even in the absence of this bill. Costs associated with administration of ballot drop boxes (delivery costs and local personnel, mileage, and security costs) and reporting of election results by precinct (costs associated with an increased number of ballots and ballot styles) are therefore not accounted for as costs of this bill.

Local Fiscal Effect: The bill affects local government finances in the following ways:

- **Live Streaming and Video Archiving of Local Board Meetings** (provision 2) – Local government expenditures increase, in each county that does not already meet the bill's requirement, by approximately \$13,000 in fiscal 2022 and \$4,000 annually thereafter, assuming costs are similar to those incurred by SBE for live streaming and video archiving of its meetings.
- **Affiliation with a Party during Early Voting and Election Day** (provision 4) – Local government expenditures increase, collectively, by \$106,500 in fiscal 2022 and future years in which a gubernatorial primary election occurs and by \$142,000 in fiscal 2024 and future years in which a presidential primary election occurs, reflecting the local boards' share of ballot costs associated with allowing an unaffiliated voter to change to a party affiliation at any time an individual may register to vote, including during early voting and on Election Day. Additional costs,

paid for by local boards, may be incurred for programming of pollbooks to implement the change.

- **Circuit Court Judge Primary Open to Any Voter** (provision 8) – Local government expenditures increase, collectively, by at least \$45,000 in fiscal 2022 and by at least \$32,500 annually thereafter, reflecting the local boards’ share of programming and ballot costs associated with allowing any registered voter, regardless of party affiliation or lack of party affiliation, to vote in a primary election to nominate candidates for judge of the circuit court. Costs are also incurred to send additional specimen ballots prior to a primary election to voters who would not otherwise be eligible to vote in a given primary election in the absence of the bill (a potential increase of \$12,000 in Baltimore City, for example).
- **Limitation on the Ability of a Voter to Receive a Mail-in Ballot through the Internet** (provision 13) – Local government expenditures decrease by approximately \$0.68 for each mail-in ballot that is no longer sent to a voter through the Internet as a result of the bill, reflecting a shift in costs from local board personnel costs associated with canvassing of mail-in ballots sent to voters through the Internet, to costs of instead mailing ballots to voters, a cost shared by SBE and the local boards.
- **Prohibition on Party Affiliation Information Appearing on Absentee Ballot Envelopes** (provision 14) – Local government expenditures may increase, collectively, by up to \$224,000 in fiscal 2022 only, for programming of SBE’s election systems to reconfigure the way that ballot styles are identified (the ballot style identification is included on absentee ballot envelopes in order to match the correct ballot style with a voter’s outgoing absentee ballot envelope), so that they do not include an indication of party affiliation.
- **Privacy Sleeve Included with Mail-in Ballot Envelopes** (provision 15) – Local government expenditures may increase to the extent that including a privacy sleeve with mail-in ballots increases the cost of printing and mailing the ballots, a cost shared by SBE and the local boards of elections.
- **80% of Registered Voters within a Five-mile Radius of an Early Voting Center** (provision 19) – To the extent the bill may require a county to use the option under current law to establish one additional early voting center in order to meet the bill’s requirement that 80% of registered voters live within a five-mile radius of an early voting center, local government expenditures increase by at least approximately \$40,000 annually per additional early voting center established, reflecting the local board’s share of voting system costs and other local operating costs.

- **Shifting of the Early Voting Period** (provision 20) – Local government expenditures increase, collectively, by at least \$520,000 in fiscal 2022 and by at least \$60,000 annually thereafter for the cost of additional routers and ongoing service provider fees to be able to network all election day polling places in order to communicate information regarding individuals who voted during early voting to the pollbooks in election day polling places, within a limited timeframe. Additional personnel, infrastructure, and other costs may be incurred to implement the networking of all polling places and communication of early voting data through that network.
- **Additional Early Voting Hours** (provision 21) – Local government expenditures increase by at least \$15,500 in fiscal 2022, and by ongoing amounts in future years, reflecting the local boards’ share of additional voting system support personnel costs. Expenditures may also further increase due to other support personnel working additional hours during early voting and increased costs for election judge compensation and/or recruitment.
- **Mail-in Ballot Canvass Beginning 15 Days Before Election Day** (provision 22) – Local government expenditures increase to begin canvassing mail-in ballots 15 days before Election Day to the extent a county would otherwise have regular, full-time staff assisting with the mail-in ballot canvass after the election, but prior to the election those staff are occupied with supporting early voting and other election administration activities. For a similar provision in other legislation, for example, Baltimore City and Washington, Prince George’s, and Montgomery counties, indicated that costs could increase, respectively, by \$25,000, \$10,300, \$63,800, and upward of \$100,000 for each election.

As mentioned above under the State Fiscal Effect, costs associated with administration of ballot drop boxes (delivery costs and local personnel, mileage, and security costs) and reporting of election results by precinct (costs associated with an increased number of ballots and ballot styles) are not considered, for the purposes of this fiscal and policy note, to be costs of this bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Carroll, Frederick, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Office of the State Prosecutor; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2021
rh/hlb

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510