

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 163

(Senator Kagan, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Election Law - Ballots - Processing and Reporting Procedures

This emergency bill makes changes to State election law relating to (1) the start of absentee ballot processing during an election; (2) the definition of “canvass”; (3) a voter’s ability to correct a failure to sign the oath on an absentee ballot envelope; (4) instances where a local board of elections receives more than one ballot, in separate envelopes, from the same individual; and (5) reporting of election results by precinct.

Fiscal Summary

State Effect: General fund expenditures increase by \$53,400 in FY 2023, and by ongoing amounts in future years, as discussed below. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	53,400	91,600	94,200	96,700	99,200
Net Effect	(\$53,400)	(\$91,600)	(\$94,200)	(\$96,700)	(\$99,200)

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

Local Effect: Local government expenditures may increase in some counties, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Start of Absentee Ballot Processing

The bill replaces a provision that prohibits a local board of elections from opening any envelope of an absentee ballot prior to 8 a.m. on the Wednesday following Election Day with a provision that instead prohibits a local board from accepting, rejecting, opening, or processing any envelope of an absentee ballot before 8 a.m. on the day that is eight business days before the first day of early voting. The bill also prohibits a local board, or an employee of a local board, from tabulating absentee ballot vote totals before the polls close on Election Day; however, during the 2022 statewide primary election only, a local board or an employee of a local board (1) may tabulate absentee ballot vote totals before the polls close on Election Day and (2) may not release absentee ballot vote totals before the polls close on Election Day. The bill clarifies that an existing requirement – that a local board prepare and release a report of the unofficial results/returns of the absentee vote tabulation at the end of each day of canvassing – applies after the polls close on Election Day.

Definition of “Canvass”

The bill modifies the definition of “canvass” by repealing a reference to the canvass process including auditing of votes.

Failure to Sign the Oath on an Absentee Ballot Envelope

The bill replaces a requirement that a local board reject an absentee ballot if the voter failed to sign the oath on the ballot envelope with a requirement that the local board reject an absentee ballot if the voter both failed to sign the oath on the ballot envelope or ballot/return envelope *and* failed to correct the omission before 10 a.m. on the day that is 10 days after Election Day. The bill also requires a local board – promptly after receipt of an absentee ballot – to review the ballot envelope or ballot/return envelope for the omission of the voter’s signature on the oath.

The State Board of Elections (SBE) must adopt regulations requiring a local board to, as soon as practicable but not later than three business days after the date on which it was determined that a voter failed to sign the oath on the ballot envelope or ballot/return envelope, notify the voter of the failure and provide the voter an opportunity to correct the omission and have the ballot counted. The regulations must allow a voter to (1) supply a signature to the local board through a digital picture message sent by email, or, beginning June 1, 2023, mobile telephone and (2) choose among multiple methods of communicating with the local board to correct the failure to sign the oath, including email, a mailed form,

an in-person visit to the local board office, and, beginning June 1, 2023, text message and an accessible online portal.

Multiple Ballots Received from the Same Individual

The bill requires a local board of elections, if the local board receives more than one ballot, in separate envelopes, from the same individual, to count the first ballot from the individual that is determined to be legally sufficient and reject any other ballot.

Under provisions governing canvassing of absentee ballots, the bill repeals a provision that requires a local board of elections, if the local board 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 and reject any other ballot. The bill also repeals a requirement that a local board reject a provisional ballot if the individual cast more than one ballot for the same election.

Election Results by Precinct

The bill requires that SBE's reports of election results by precinct include the early, absentee, and provisional vote. The bill also repeals requirements that local boards of elections (1) report election results by precinct and (2) publish a sufficient number of copies of the complete election results, tabulated by precinct, and make the copies available to the public at cost.

Current Law:

Absentee (Mail-in) Ballot Processing/Canvassing

Following an election, each local board of elections must meet at its designated counting center to canvass absentee (mail-in) ballots cast in that election in accordance with the regulations and guidelines established by SBE. "Canvass" means the entire process of vote tallying, vote tabulation, and vote verification or audit, culminating in the production and certification of the official election results. For absentee ballots, the "canvass" includes the opening of any envelope accompanying an absentee ballot and the assembly and review of absentee ballots in preparation for vote tallying.

A local board of elections may not open any envelope of an absentee ballot prior to 8:00 a.m. on the Wednesday following Election Day.

SBE regulations require that local boards of elections start to canvass absentee ballots at 10 a.m. on the Thursday after the election and start the second absentee ballot canvass at 10 a.m. on the second Friday after an election.

“Canvass,” Certification of Results, and Postelection Tabulation Audits

After each election, each board of canvassers (a local board of elections organized for the purpose of canvassing the vote) must transmit to the Governor, SBE, and the clerk of the circuit court for the county certified copies of the election results in the county. The transmittal must be made on the second Friday after a primary or general election or, if the canvass is completed after that date, within 48 hours after the completion of the canvass. As mentioned above, “canvass” means the entire process of vote tallying, vote tabulation, and vote verification *or audit*, culminating in the production and certification of the official election results.

Chapter 523 of 2018 requires SBE to conduct an audit of the accuracy of the voting system’s tabulation of votes, following each statewide general election, by completing (1) an automated software audit of the electronic images of all ballots cast in the election and (2) a specified manual audit of voter-verifiable paper records. Following each statewide primary election, SBE (1) must complete an automated software audit of the electronic images of all ballots cast in the election and (2) may complete a manual audit of voter-verifiable paper records in a manner prescribed by SBE. The manual audit that must be completed following each statewide general election must be completed within 120 days after the general election, and Chapter 523 establishes that both the manual audits and automated software audits may not have any effect on the certified election results and must be used to improve the voting system and voting process for future elections.

Failure to Sign the Oath on an Absentee Ballot Envelope

A local board of elections may not reject an absentee ballot except by unanimous vote and in accordance with SBE regulations. A local board must reject an absentee ballot if the voter failed to sign the oath on the ballot envelope.

SBE regulations require an election director – if an absentee ballot is timely received but the voter did not sign the required oath – to promptly notify the voter and explain how the voter can provide a signed oath and when it must be received in order for the voter’s ballot to be accepted. The election director must notify the voter using the voter’s preferred method of communication indicated on the voter’s form requesting the ballot.

Multiple Ballots Received from the Same Individual

State law requires a local board of elections to reject a provisional ballot if the individual cast more than one ballot for the same election. Under provisions governing canvassing of absentee ballots, State law requires a local board of elections – if the local board 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 and reject any other ballot.

Pursuant to SBE regulations, if an absentee ballot and provisional ballot are received from the same individual, a local board of elections must reject both ballots.

Election Results by Precinct

State law requires local boards of elections and SBE to make election results available by precinct, but prohibits a statement prepared by a local board from reporting the absentee vote separately by precinct. Each local board must publish a sufficient number of copies of the complete election results, tabulated by precinct, and must make the copies available to the public at cost.

State Fiscal Effect: General fund expenditures increase by \$53,437 in fiscal 2023. This estimate reflects the cost of hiring an information technology (IT) programmer within SBE (with an assumed start date of January 1, 2023) to assist in the development and maintenance of a system that will meet the bill's requirements for a voter's ability to correct a failure to sign the oath on the voter's mail-in ballot envelope through text messaging and an accessible online portal, beginning June 1, 2023. While the system is used by the local boards of elections to communicate with voters, this estimate assumes a centralized system is developed by SBE. The additional IT development and maintenance work is not expected to be able to be absorbed by existing SBE staff. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. A significant portion of the costs associated with hiring the programmer will be incurred in later fiscal years when the programmer is paid a full year's salary. For example, in fiscal 2024, general fund expenditures increase by \$91,609.

Position	1.0
Salary and Fringe Benefits	\$46,359
Operating Expenses	<u>7,078</u>
Total FY 2023 State Expenditures	\$53,437

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Local Fiscal Effect: While the bill does not require counties to begin processing mail-in ballot envelopes eight business days before early voting, to the extent the bill leads to an expectation that processing of the ballot envelopes will begin at or around that time, in order to have partial mail-in voting results available on or soon after Election Day, expenditures may increase in some counties. Of a small number of counties contacted, for example, Washington County expects its costs to increase by \$13,700 each election, while Baltimore, Carroll, Montgomery, Prince George's, and St. Mary's counties do not expect the earlier start of processing of mail-in ballot envelopes to have a material effect on overall costs of processing the ballots.

The bill's other provisions are not expected to materially affect local government finances, assuming a centralized system for communications with voters about a failure to sign an oath, by text messaging and an accessible online portal, is developed by SBE.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Baltimore, Carroll, Montgomery, Prince George's, St. Mary's, and Washington counties; Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2022
rh/hlb Third Reader - March 18, 2022
Revised - Amendment(s) - March 18, 2022
Enrolled - May 5, 2022
Revised - Amendment(s) - May 5, 2022

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