

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 802 (Senator Brooks, *et al.*)  
Education, Energy, and the Environment

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Election Law - Voters With Disabilities - Electronic Ballot Return

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This bill requires the State Board of Elections (SBE) to establish a process by which an individual with disabilities may return a marked absentee ballot to a local board of elections electronically, to be first implemented in the 2026 statewide primary election. **The bill takes effect January 1, 2025.**

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Fiscal Summary

**State Effect:** General fund expenditures increase, potentially significantly in FY 2025 (potentially as much as \$1.0 million), and by at least \$125,000 annually from FY 2026 through 2029. Revenues are not affected.

**Local Effect:** Local government expenditures increase, collectively, by at least \$200,000 in FY 2025 and by at least \$125,000 annually from FY 2026 through 2029, as discussed below. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill requires SBE to establish a process by which an individual with disabilities, as defined in the Americans with Disabilities Act, may return a marked absentee ballot to a local board of elections electronically. SBE (1) must implement the electronic ballot return process beginning with the 2026 statewide primary election and (2) is not required to implement the electronic ballot return process for any special elections that may occur before the 2026 statewide primary election.

The bill alters the definition of “online ballot marking tool” to include a system that allows a voter to return a marked ballot electronically. An existing provision that indicates that an “online ballot marking tool” does not include a system that is capable of storing, tabulating, or transmitting votes or voted ballots by electronic or electromagnetic means through the Internet, is repealed. Under the bill, “online ballot marking tool” includes a system that allows a voter to (1) access a blank ballot through the Internet; (2) electronically mark the ballot with the voter’s selections; and (3) either print a paper copy of the marked ballot for mailing to a local board of elections *or* return the marked ballot electronically pursuant to the process established by SBE for individuals with disabilities to return a marked absentee ballot to a local board electronically.

The bill establishes an “electronic oath document accompanying a ballot returned electronically” as the location of a voter’s signed oath for a ballot returned electronically, under existing provisions that (1) require an absentee ballot envelope to include the voter’s signed oath in order to be counted and (2) provide a voter an opportunity to correct an omission of the voter’s signature on the oath.

The bill also modifies a requirement that a local board, if an absentee ballot is sent by the Internet or facsimile transmission, provide a voter with an envelope template, the oath prescribed by SBE, and instructions for marking and returning the absentee ballot. The bill modifies the requirement to indicate that the envelope template is optional.

### **Current Law:**

#### *Absentee (Mail-in) Voting*

An individual may vote by absentee (mail-in) ballot except to the extent preempted by federal law. An absentee ballot may be requested in writing (there are State and federal forms that can be used) or online through the SBE website. The voter may choose to receive the ballot by mail, by fax, through the Internet, or by hand at a local board of elections office. The voter may return the ballot by (1) mailing it, postmarked on or before Election Day; (2) depositing it into a ballot drop box before the polls close on Election Day; or (3) delivering it in person to an early voting center or to the local board of elections or an Election Day polling place by the close of polls on Election Day.

Chapters 56 and 514 of 2021 allow for a voter to request permanent absentee ballot status and be placed on a permanent absentee ballot list, in which case a local board of elections sends the voter an absentee ballot each time there is an election.

### *Online Ballot Marking Tool*

SBE may provide an accessible optional online ballot marking tool for use by a voter who requested to have their absentee ballot sent by the Internet. “Online ballot marking tool” includes a system that allows a voter to (1) access a blank ballot through the Internet; (2) electronically mark the ballot with the voter’s selections; and (3) print a paper copy of the marked ballot for mailing to a local board. “Online ballot marking tool” does not include a system that is capable of storing, tabulating, or transmitting votes or voted ballots by electronic or electromagnetic means through the Internet.

### *Absentee Ballot Envelopes*

An absentee ballot sent by mail must be enclosed in specially printed envelopes, the form and content of which must be prescribed by SBE. A local board of elections may use either two envelopes (“outgoing envelope” and “ballot/return envelope”) or three envelopes (“outgoing envelope,” “return envelope,” and “ballot envelope”). The ballot/return envelope or the return envelope must include prepaid postage. When voted and returned to the local board, an absentee ballot must be enclosed in a ballot envelope or ballot/return envelope, which must include an oath prescribed by SBE.

If an absentee ballot is sent by the Internet or facsimile transmission, the local board must provide the voter with an envelope template.

### *Failure to Sign the Oath on an Absentee Ballot*

Promptly after receipt of an absentee ballot, a local board of elections must review the ballot envelope or ballot/return envelope for the omission of the voter’s signature on the oath. The local board must reject an absentee ballot if the voter failed to sign the oath on the ballot envelope or ballot/return envelope and failed to correct the omission before 10:00 a.m. on the day that is 10 days after election day. SBE must adopt specified regulations requiring a local board to notify a voter of a failure to sign the oath and provide the voter an opportunity to correct the omission and have the ballot counted.

**State Fiscal Effect:** General fund expenditures are expected to increase, potentially significantly in fiscal 2025, and by at least \$125,000 annually from fiscal 2026 through 2029, for the following costs to establish a process by which an individual with disabilities may return a marked absentee ballot to a local board electronically:

- *Modification of the Existing Online Ballot Delivery System* – This analysis assumes that SBE incurs potentially significant costs in at least fiscal 2025 to modify its existing Online Ballot Delivery System (which includes the online ballot marking tool described above) to allow for the return of marked absentee ballots to local

boards of elections electronically. SBE is not able to quantify this cost and information gathered from a small number of other states that have implemented or have considered implementing electronic ballot return has resulted in varying information on the potential costs for an electronic ballot return system (varying from \$32,000 annually for a third-party encrypted file exchange service to costs in the range of \$1.0 million annually). Presumably costs vary, in part, due to differences in an election office's existing systems and the specific design and security features of an electronic ballot return system. This analysis assumes SBE incurs the full costs of modification of the online ballot delivery system, though it is possible these costs are shared by SBE and the local boards, similar to other voting-related costs.

- *Voter Outreach* – SBE advises that voter outreach will be required to inform individuals with disabilities of the new voting method available to them. Consistent with past SBE guidance regarding voter outreach costs, this analysis assumes that existing statewide voter outreach costs prior to elections increase by a minimum of \$250,000 annually in fiscal 2026 through 2029 (through the 2026 and 2028 elections) to inform individuals with disabilities of the availability of the electronic ballot return process, with the cost split evenly between SBE (\$125,000) and the local boards (\$125,000), consistent with how statewide voter outreach costs are shared between SBE and the local boards.

**Local Fiscal Effect:** Local government expenditures are expected to increase by at least \$200,000 in fiscal 2025 and by at least \$125,000 annually from fiscal 2026 through 2029, for the following costs associated with establishing a process by which an individual with disabilities may return a marked absentee ballot to a local board electronically:

- *Modification of the Statewide Voter Registration System* – SBE indicates that modifications will need to be made to the statewide voter registration system (costs of which are billed by SBE to the local boards) to be able to account for (in the voter registration system) individual voters' access to, and use of, the electronic ballot return process. This analysis assumes these costs are at least \$200,000, in fiscal 2025 (though some portion of the costs could be incurred instead in fiscal 2026) based on past programming costs that were incurred to manage the permanent absentee ballot list within the statewide voter registration system.
- *Voter Outreach* – As described above under the State Fiscal Effect, local board costs are assumed to increase, collectively, by at least \$125,000 annually in fiscal 2026 through 2029 for the local boards' share of costs of voter outreach to inform individuals with disabilities of the new voting method available to them.
- *Increased Canvassing Costs* – To the extent that the availability of the electronic ballot return process causes individuals with disabilities to use the online ballot delivery system who do not otherwise use the online ballot delivery system in the

absence of the bill, local boards' canvassing costs increase. Costs increase because absentee ballots sent to voters through the online ballot delivery system take additional time for local boards to canvass since the ballots need to be manually duplicated by canvassing staff onto paper ballot cards that can be scanned into voting machines in order for the voter's votes to be counted. *For illustrative purposes*, making certain assumptions about the number of canvassing staff, and the amount of time, needed to duplicate a ballot, if the number of online ballot delivery absentee ballots requested by voters increases by 25% in the 2026 primary and general elections compared to the number of online ballot delivery absentee ballots requested by voters in the 2022 primary and general elections as a result of the availability of the electronic ballot return process, local board costs increase, collectively, by approximately \$30,000 in fiscal 2026 (for the primary election) and \$45,000 in fiscal 2027 (for the general election).

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 775 (Delegate Feldmark, *et al.*) - Ways and Means.

**Information Source(s):** Baltimore City; Caroline, Howard, and Prince George's counties; Maryland State Board of Elections; Colorado Secretary of State; North Carolina General Assembly Fiscal Research Division; Department of Legislative Services

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