

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Revised

House Bill 5

(The Speaker, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

Voters Rights Protection Act of 2005

This bill establishes procedures for counting provisional ballots by local boards of election and for establishing a challenged voter's identity. The bill prohibits various conduct in connection with voting at polling sites and provides for civil and criminal penalties. In addition, the State Board of Elections (SBE) is required to review its policies and procedures regarding election administration. SBE must submit a report of its findings and recommendations in this regard to the Governor and the General Assembly by December 1, 2005.

Fiscal Summary

State Effect: The civil and criminal penalty provisions of this bill are not expected to significantly affect State finances or operations. The bill's procedural changes would not directly affect SBE general fund expenditures.

Local Effect: The civil and criminal penalty provisions of this bill are not expected to significantly affect local finances or operations. The bill's procedural changes would not directly affect local boards of election expenditures.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a local election board to count an entire provisional ballot cast by a voter if the address on the provisional ballot application is within the precinct where the ballot was cast. If the address on the ballot application is not within

the precinct where the ballot was cast, the board must count only the votes cast by a voter for each candidate or question applicable to the precinct in which the voter resides.

Voter Proof of Identity

An individual whose right to vote has been challenged at the poll may establish his/her identity and vote by a regular ballot by presenting any of the following: (1) a voter registration card; (2) a Social Security card; (3) a valid Maryland driver's license; (4) a State or federal government issued identification card; (5) a photo identification issued by an employer; or (6) a copy of a current bill, bank statement, government check, paycheck, or government document that shows the name of the voter.

A challenged individual who cannot present any of the required forms of identification must vote by provisional ballot.

Criminal Offenses

The bill prohibits influencing or attempting to influence a voter's decision whether to go to the polls and vote through the use of force, threat, menace, intimidation, bribe, reward, or offer of reward. Engaging in any conduct that results in the denial or abridgement of any U.S. citizen's right to vote on account of race or color is also expressly prohibited. An individual committing any of these offenses is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$2,500 or imprisonment for not more than five years, or both.

Civil Offenses

The bill establishes civil penalties for attiring or equipping an individual or permitting an individual to be attired or equipped in a manner that creates the appearance that the individual is performing an official or governmental function in connection with an election including: (1) wearing a public or private law enforcement or security guard uniform; (2) using an armband; or (3) carrying or displaying a gun or badge within 100 feet of a polling site on election day except as required by law or regulation adopted by the State board in connection with ballot security activities.

The bill exempts a uniformed law enforcement officer performing an official governmental function at a polling site. Similarly, the bill allows an officer or security guard who is either on duty or traveling to or from duty, to vote while wearing a uniform.

Any individual who violates the criminal and civil offenses in the bill without knowing the act is illegal shall pay a civil penalty not to exceed \$5,000 and be issued a civil citation in accordance with Title 13 of the Election Law Article.

State Board Policy and Procedure Review

The bill also requires SBE to review its policies and procedures to ensure that:

- a “Voter Bill of Rights” is posted at each polling place;
- in cooperation with law enforcement, consistent standards exist which clearly define the purpose, role, and responsibility of law enforcement officers stationed at polling places;
- recruitment and training of election judges and poll workers are effective, particularly in regard to requirements under the Help America Vote Act of 2002, and State laws regarding voter identification and provisional ballots;
- in cooperation with law enforcement, there is an adequate amount of police officers and attorneys to monitor, investigate, and record incidents of voter intimidation;
- there is a hotline for the public to report incidents of voter intimidation;
- local boards ensure each polling place is open on time and specify what action will be taken if a polling site does not open promptly;
- any voter removed from the voter registration rolls due to a conviction will be provided timely notice in writing;
- that an inactive voter is afforded the opportunity to cast a provisional ballot in order to restore the voter’s status to that of an eligible voter; and
- the responsibility of the Motor Vehicle Administration (MVA) to process and forward an individual’s voter registration application to SBE within five business days of receipt is clarified, and what actions will be taken by SBE if the administration fails to do so.

Current Law: An individual is eligible to cast a provisional ballot if the individual declares in a written affirmation submitted with the provisional ballot that the individual is a registered voter in the State, is eligible to vote in that election, and either the individual's name does not appear on the precinct register, or an election official asserts that the individual is not eligible to vote, or the individual does not have the necessary identification.

An individual is qualified to vote the provisional ballot cast on election day if the local board determines that: (1) the individual is registered in the State; (2) based on the address given on the provisional ballot application, the individual resides in the precinct in which the individual seeks to vote; and (3) if the provisional ballot was cast because the voter failed to provide required identification and the individual who cast the provisional ballot has met the identification requirements established by the State board.

The right of an individual to vote may be challenged at the polls only on the grounds of identity. If a challenge is made, the election judge receiving the challenge must offer the challenged individual the opportunity cast a provisional ballot and submit an attestation, witnessed by the election judge, of the individual's identity. The challenger must provide in writing, under penalty of perjury, the reasons for the challenge. The provisional ballot and other materials related to the challenge must be submitted to the local board for determination of whether the challenged individual is the registered voter the individual claims to be, and otherwise qualified to vote. There are no provisions in statute that would allow a challenged voter to establish his or her identity at the polling place on election day and thereby vote using the standard ballot.

A person may not willfully and knowingly influence or attempt to influence a voter's voting decision through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward. An individual committing any of these offenses is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$2,500 or imprisonment for not more than five years, or both.

Background: The American Civil Liberties Union recommends generally that a voter bill of rights be posted in polling places and where people register to vote, and that measures be taken to ensure that individuals are free to register and vote without intimidation or undue complexity. To that end, the organization suggests measures that require law enforcement to monitor and investigate reported incidents of voter intimidation and provide information to voters regarding provisional ballot availability, voters that have been removed from the registration lists of local boards, and the role of police officers at polling places.

Additional Information

Prior Introductions: None.

Cross File: SB 287 (Senator Gladden, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Frederick County, Montgomery County, Prince George's County, Somerset County, Maryland State Board of Elections, Department of Legislative Services

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