

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 386 (Senator Gladden, *et al.*)
Education, Health, and Environmental Affairs

Voter's Rights Protection Act of 2007

This bill makes various changes to State election law relating to provisional voting, election judge training and conduct, campaign material, information provided to voters, local election board requirements, and prohibited actions.

Fiscal Summary

State Effect: None. The bill's requirements are not anticipated to directly affect State finances.

Local Effect: Local government expenditures could increase due to provisional voter notification costs. *This bill may impose a mandate on a unit of local government.*

Small Business Effect: None.

Analysis

Bill Summary:

Provisional Voting

The bill requires guidelines established by the State Board of Elections (SBE) for the administration of provisional ballot voting by local boards to provide standards for notice to any voter as to the disposition of the voter's provisional ballot. Written information must also be given to a voter, prior to casting a provisional ballot, that lets them know that at least three weeks before the close of voter registration for the next election notice

will be provided by the local board advising the individual whether specific action must be taken to be eligible to cast a regular ballot at that election, and if so, describing what specific action must be taken.

The bill also requires an individual to be offered a provisional ballot if the individual experiences a problem with the electronic voting system that causes an atypical delay or results in the loss of the individual's ballot, provided any regular ballot that was distributed to the individual is voided.

Election Judge Training and Conduct/Information Provided to Voters

The bill requires SBE to ensure that the election judge training program incorporates a thorough and detailed treatment of the duties and limitations of election judges under State and federal election law. The bill also clarifies that an election judge may only require a voter to present photo identification to the extent authorized or required by State or federal law. Information on the circumstances under which a voter may be requested or required to present photo identification to an election judge before being allowed to vote must be included in informational materials to be posted in each polling place.

Campaign Material

Campaign material may not fraudulently misrepresent a candidate's party affiliation or imply that a candidate has been nominated by a party that the candidate has not been nominated by. Campaign material also may not fraudulently represent that a candidate is the incumbent of the office sought if the candidate is not.

Local Board Requirements

If the opening of a polling place is delayed beyond 8 a.m., the bill requires a local board to file a petition with the circuit court for that county to extend voting hours at that polling place.

Local boards must also provide election judges with directions, included with procedures for closing the polls, on the documentation for further investigation by the local board or SBE of any malfunction of the voting system during the election.

Prohibited Actions

Under the bills requirements, a person may not willfully and knowingly influence or attempt to influence a voter's voting decision through the use of fraud.

While acting as a challenger or watcher at a polling place, a person may not willfully and knowingly make a challenge indiscriminately and without good cause or for the purpose of annoyance or delay or interfere with or unduly delay the work of an election judge.

The bill allows for the Attorney General or any registered voter to institute an action in circuit court for preventive relief when a person has engaged or there are reasonable grounds to believe a person is about to engage in one of the above-mentioned actions or other prohibited actions specified under State election law. The circuit court must hear and determine the matter immediately upon the filing of the petition and may exercise its jurisdiction without regard to whether a person asserting a right has exhausted administrative or other remedies.

Current Law:

Provisional Voting

SBE is responsible for establishing guidelines for the administration of provisional ballot voting by local boards. Under State law, an individual is eligible to vote a provisional ballot if the individual declares in a written affirmation that the individual is a registered voter and eligible to vote in the election and the individual's name does not appear on the precinct register, an election official asserts the individual is not eligible to vote, or the individual does not have the necessary identification. SBE is required by State law and the Help America Vote Act (HAVA) to establish a system which a voter may access to discover whether the voter's provisional ballot was counted, and if not, the reason it was not counted.

Voter Identification

Under State law, an election judge is required to establish the identity of a voter by requesting the voter to state the month and day of the voter's birth. The election judge must also verify the voter's residence address unless the voter's personal information has been deemed confidential by a local board, in which case an alternative verification method established by SBE is used. Under HAVA, a first-time voter who registers by mail must provide one of various specified forms of identification in order to vote in an election for federal office.

Polling Places

Polling places are required to be open from 7 a.m. until 8 p.m. on an election day. A voter who has appeared at the polling place by 8 p.m. must be allowed to vote.

Prohibited Actions

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.

Challengers/Watchers

A person's right to vote may only be challenged on the basis of their identity. State law allows for challengers and watchers who are registered voters and designated by SBE; a local board; a candidate; a political party; or any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot to be present at a polling place.

Challengers and watchers may enter a polling place a half hour before polls open and remain in the polling place until the polls are closed and election judges leave the polling place. Challengers and watchers generally may not interact with voters in the polling place or handle any original election documents. An election judge also may permit an individual who is not a challenger or watcher to enter the polling place to challenge a voter, after which the individual must leave the polling place.

Background:

Provisional Voting

As required by HAVA and State law, a Maryland voter may determine whether or not the voter's provisional ballot was accepted through an online database administered by the University of Maryland, Baltimore County or by calling a toll-free number.

In the process of voting a provisional ballot, a voter fills out a voter registration application, which, depending on the reason the voter had to vote a provisional ballot, will generally register the voter, if sufficient information is provided, and allow them to vote a regular ballot at the next election. Notices are sent to voters in instances where a person registers to vote or makes a change to their voter registration record.

Any changes to the statewide voter registration system that are necessary due to legislative changes are absorbable within the State's current vendor contract and would not result in additional cost to the State.

2006 Elections

A number of jurisdictions experienced problems with recruitment of election judges during the 2006 elections and Baltimore City experienced a substantial problem during the 2006 primary of election judges not showing up for work, which led to a number of polling places opening late. There were also reports during the 2006 elections of election judges requesting forms of identification from voters that were not required by State or federal law.

Local Expenditures: To the extent local boards are required to send out notices to provisional voters regarding the disposition of the voters' ballots and any specific action that must be taken in order for the voter to vote a provisional ballot, county expenditures could increase. It is expected that the statewide voter registration may be modified to generate notices, though local boards may need to generate notices in some cases. Local board estimates of the costs associated with the bill vary. Montgomery County estimates expenditures could increase by \$12,000 in fiscal 2008 for personnel and communications costs, while Prince George's County estimates expenditures could increase by \$39,000 for personnel and voter notification/education costs. Garrett County estimates any increase in expenditures would be minimal.

The authorization in the bill allowing the Attorney General or any registered voter to institute an action in circuit court for preventive relief could have a substantial effect on court operations on election day and possibly days prior to an election. The extent of the effect would depend on the number of actions instituted. The bill, however, is not anticipated to have a significant fiscal impact on the courts.

Additional Information

Prior Introductions: None.

Cross File: HB 309 (Delegate Rosenberg, *et al.*) – Ways and Means.

Information Source(s): Garrett County, Montgomery County, Prince George's County, Administrative Office of the Courts, State Board of Elections, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2007
ncs/jr

Analysis by: Scott D. Kennedy

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