

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 320 (Senator Gladden)
Education, Health, and Environmental Affairs

Voter's Rights Protection Act of 2009

This bill makes various changes to State election law relating to provisional voting, election judge training and conduct, campaign material, polling place procedures, election challengers and watchers, and prohibited actions.

The bill also requires the State Administrator of Elections and the Office of the Attorney General to study issues relating to the implementation of a system to allow voters to vote over the Internet. A report of their findings and recommendations is due by December 31, 2010.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures due to the bill's criminal/civil offenses. The study and reporting requirements can be handled with existing resources of the State Board of Elections and the Office of the Attorney General.

Local Effect: Potential increase in revenues and expenditures due to the bill's criminal offenses. Certain local governments could also experience additional election judge compensation costs, in the event of extended polling place hours, and limited additional voter registration staff costs.

Small Business Effect: None.

Analysis

Bill Summary: The bill contains various provisions relating to or establishing:

- the eligibility of a voter to cast a provisional ballot due to a problem outside of a voter's control causing the voter to be unable to vote a regular ballot;
- training of election judges with regard to (1) judges' duties and limitations under State and federal election law and (2) effective operation of the voting system and all of its features;
- the extension of a polling place's hours for up to two hours if, for any reason, the polling place is closed for more than one hour during regular voting hours;
- the inability of a vacancy in the polling place staff to delay the opening of a polling place;
- limitations on the extent to which an election judge may require a voter to present identification before allowing a voter to cast a ballot;
- documentation by chief election judges of issues that arise in the polling place;
- prohibitions applicable to challengers and watchers;
- a prohibition relating to the distribution, dissemination, or publication of specified false campaign material and standards applicable to the imposition of civil penalties for, or issuance of an injunction against, a violation;
- a prohibition relating to the use of electronic mail, or telephone facilities or equipment, with the intent to prevent, obstruct, or delay (1) a person from registering to vote, (2) any other telecommunications device from being used to engage in communications containing election-related information, or (3) the broadcast or exchange of voter registration or election-related information;
- a prohibition against a person willfully and knowingly engaging in conduct that results or has the intent to result in the disruption of polling place activities;
- the ability of the Attorney General or any registered voter to institute a court action for preventive relief if a person, political committee, campaign finance

entity, or other organization or entity has engaged in, or there is reasonable grounds to believe a person, political committee, campaign finance entity, or other organization or entity is about to engage in, specified prohibited acts or practices; and

- prohibitions generally against an individual being prevented from registering to vote or having the person's registration status, eligibility to register to vote, or eligibility to vote challenged on the basis of specified evidence; requirements applicable to specified formal challenges to an individual's eligibility to register to vote or eligibility to vote submitted by a person other than a State or local election official; and applicable criminal penalties.

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.

Election Judge Training

SBE is responsible for developing a training program for election judges, upon which the local boards base the training they conduct for their judges. SBE must provide uniform statewide training for election judges on the voting system, including training on all features providing access to voters with disabilities and the rights of voters with disabilities.

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.

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 the Help America Vote Act, a first-time voter who registers by mail, and does not provide specified identification information with their registration, must provide one of various specified forms of identification in order to vote in an election for federal office.

Challengers/Watchers

A person's right to vote may only be challenged on the basis of his/her 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.

Prohibited Actions/Penalties

Various voting-related offenses are specified in State law, including (1) specified means of willfully and knowingly influencing or attempting to influence a voter's voting decision or decision whether to go to the polls to vote; and (2) engaging in conduct that denies or abridges, or has the intent to deny or abridge, a person's right to vote on account of race, color, or disability. These offenses are generally misdemeanors and are subject to a fine of up to \$2,500 and/or imprisonment for up to five years. Certain violations can instead be subject to a civil penalty of up to \$5,000 if the person did not know the act was illegal.

Except as otherwise provided for specific offenses, a person who knowingly and willfully violates a provision of Title 13 of the Election Law Article (within which the bill's provisions relating to distribution, dissemination, or publication of specified campaign material are included) is guilty of a misdemeanor and on conviction is subject to a fine of up to \$25,000 and/or imprisonment for up to one year. An unknowing violation is subject to a civil penalty of up to \$5,000. The Secretary of State may also seek an immediate injunction against a violation of Title 13.

Background: Equipment-related issues during the 2006 primary election resulted in the need for provisional ballots to be used to vote in many situations in place of regular ballots cast on voting machines. In addition, difficulties, including insufficient

recruitment and absenteeism of election judges, resulted in a delay in the opening of some polling places, and challenges attributed to inadequate training for election judges were experienced. By most accounts, these issues were addressed and largely corrected prior to the general election. The Office of the Attorney General gave advice after the 2006 primary election that a polling place may open for voting despite one or more election judges failing to appear.

SBE reports 99.6% of polling places opened on time during the November 2008 general election and those that did not open on time were open by 7:20 a.m.

State Revenues: General fund revenues may increase minimally as a result of the criminal/civil offenses established under the bill from cases heard in the District Court.

State Expenditures:

Incarceration Costs

General fund expenditures may increase minimally as a result of the incarceration penalties associated with the criminal offenses established under the bill due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed offenses is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Office of the State Prosecutor

General fund expenditures could increase for the Office of the State Prosecutor to investigate complaints associated with the offenses established under the bill. The number of complaints that would need to be investigated and any associated increase in general fund expenditures, however, cannot be reliably estimated. In fiscal 2007, the State Prosecutor received 469 election law complaints, and in fiscal 2008, 147 election law complaints were received.

Local Revenues: Revenues may increase minimally as a result of the criminal offenses established under the bill from cases heard in the circuit courts.

Local Expenditures:

Potential Election Judge Compensation and Voter Registration Personnel Costs

To the extent the bill's requirement relating to automatic extension of polling place hours would extend voting hours when they otherwise would not be extended by a court order, the bill could result in increased local government expenditures to provide additional compensation to election judges. While not a requirement of the bill, local boards have indicated the importance of additional compensation for election judges in such circumstances to retention of the judges for future elections.

Harford County indicates limited additional staff resources may be needed during heavy periods of voter registration to verify voter registration information, so as not to potentially violate the bill's prohibition against an election official preventing an individual from registering to vote in an election for specified reasons.

Criminal Offenses

Expenditures may increase minimally as a result of the incarceration penalties associated with criminal offenses established under the bill. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Court Actions for Preventive Relief

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: Similar bills were introduced in 2007 and 2008. SB 386 of 2007 and SB 54 of 2008 both had a hearing in the Senate Education, Health, and Environmental Affairs Committee but no further action was taken. HB 309 of 2007 and HB 102 of 2008 both passed the House but no action was taken by the Senate.

Cross File: HB 391 (Delegate Rosenberg, *et al.*) - Ways and Means.

Information Source(s): Office of the Attorney General; Office of the State Prosecutor; Judiciary (Administrative Office of the Courts); Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Department of Legislative Services

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