

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 28

(Senators Lenett and Raskin)

Education, Health, and Environmental Affairs

Ways and Means

Honorable Lorraine M. Sheehan Act to Protect Voting Rights for Individuals
Under Guardianship for Mental Disability

This bill amends an existing provision of State law that disqualifies an individual who is under guardianship for mental disability from being able to register to vote. Under the bill, in order for an individual under guardianship for mental disability to be disqualified, a court of competent jurisdiction must have specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures increase minimally in FY 2010 due to increased costs to make revised voter registration-related Motor Vehicle Administration (MVA) forms available after the effective date of the bill. The bill's change is expected to be accounted for by the State Board of Elections (SBE) with existing resources, and any impact on the Judiciary is expected to be handled with existing resources.

Local Effect: Any impact on local governments is expected to be minimal.

Small Business Effect: None.

Analysis

Current Law: Article I, § 4 of the Maryland Constitution gives the General Assembly the authority to “regulate or prohibit the right to vote of a person ... under care or guardianship for mental disability.” Under State law, an individual under guardianship for mental disability is not qualified to be a registered voter.

Background: A guardian is generally appointed for an individual when a circuit court determines that the individual cannot make or communicate responsible decisions concerning his or her person, or cannot manage his or her property and affairs effectively, for reasons including mental disability. A person’s capacity to vote is not part of the court’s determination.

Information on the total number of people in the State who are under guardianship for mental disability, or under adult guardianship in general, does not appear to be readily available. Directors of local departments of social services, which serve as public guardians for individuals age 18 to 64 at the time of appointment, served as guardians for 588 individuals as of July 31, 2009. The Secretary of Aging and directors of area agencies on aging, which serve as public guardians for individuals age 65 and older at the time of appointment, served as guardians for 786 individuals in fiscal 2009. It is uncertain how many of these guardianships were for mental disability and how the number of public guardianships compares to the number of private guardianships in the State.

The Governor’s Transition Election Work Group Report recommended modifying the voting prohibition regarding individuals under guardianship for mental disability, stating that it “broadly denies a specific group of individuals with disabilities the right to vote without a specific finding that they are not competent to vote.” In 2001, a federal District Court found that a prohibition in Maine that is roughly similar to Maryland’s violated the Due Process and Equal Protection clauses of the U.S. Constitution and that the Maine defendants, in implementing the prohibition, had violated two federal statutes, the Americans with Disabilities Act and the Rehabilitation Act.

The state constitutions and/or election statutes of a majority of states prohibit persons with mental disabilities from voting to one extent or another. Some states, similar to Maryland, limit the prohibition to individuals who are under guardianship. Some other states require some type of determination by a court specific to the person’s capacity to vote and still other states have broader restrictions with no indication that a determination be made by a court.

A symposium held at the University of the Pacific, McGeorge School of Law (“Facilitating Voting as People Age: Implications of Cognitive Impairment”), involving

experts in law and aging, disability, medicine, long-term care, voting technology, and elections administration, made various recommendations regarding facilitation of voting by persons with disabilities while preserving the integrity of the voting process. The results of the symposium were published in a 2007 issue of the *McGeorge Law Review*. One of the symposium's recommendations was that:

“If state law permits exclusion of a person from voting on the basis of incapacity, such exclusion should have legal effect only if: (1) the exclusion is based on a determination by a court of competent jurisdiction; (2) appropriate due process protections have been afforded; and (3) the court states on the record that the basis for the exclusion has been established by clear and convincing evidence.”

With respect to a standard for determining incapacity, the symposium recommended:

“a person should be determined to lack capacity only if the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process.”

The American Bar Association (ABA) Commission on Law and Aging was a sponsor of the symposium and the ABA House of Delegates adopted a recommendation similar to the symposium's recommendation in 2007.

State Fiscal Effect:

Motor Vehicle Administration

Transportation Trust Fund expenditures may increase minimally in fiscal 2010 to reprint MVA forms to reflect the change in voter registration qualifications. MVA indicates the cost associated with revising and printing a three-month inventory of necessary forms would be \$10,000. MVA, however, has a system in place to adjust the regular printing of forms to minimize costs and wasted forms associated with expected revisions, likely resulting in any increase in costs being less than \$10,000.

State Board of Elections

The bill's change is expected to be accounted for by SBE with existing resources. This assumes SBE will need to print new voter registration applications after the 2010 legislative session, for use leading up to the 2010 primary and general elections, with or without the bill. SBE indicates that, historically, printing additional voter registration applications has been necessary after legislative sessions.

Additional Information

Prior Introductions: None.

Cross File: HB 816 (Delegate Cardin, *et al.*) - Ways and Means.

Information Source(s): State Board of Elections; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation (Motor Vehicle Administration); Department of Human Resources; Maryland Department of Aging; *Governor's Transition Election Workgroup Report* (O'Malley Administration); *Doe v. Rowe*, 156 F.Supp.2d 35 (D. Maine 2001); Bazelon Center for Mental Health Law; University of the Pacific, McGeorge School of Law; American Bar Association; Department of Legislative Services

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