

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 31
Ways and Means

(Delegate Rosenberg, *et al.*)

Education, Health, and Environmental Affairs
and Judicial Proceedings

Voter's Rights Protection Act of 2011

This bill authorizes the Attorney General to institute an action in circuit court for injunctive relief to prohibit a person from committing an imminent violation or continuing to commit a violation of specified provisions of the Election Law Article that prohibit certain voting-related offenses. Injunctive relief, however, may only be granted pursuant to the bill to prevent such a violation from affecting a pending election. The circuit court must hear and determine the matter as soon as practicable after the filing of an application for injunctive relief and must exercise its jurisdiction without regard to whether a person asserting a right has exhausted administrative or other available remedies. The grant of a remedy by a circuit court does not preclude any other available remedy under State or federal law.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Various voting-related offenses are specified in statute, including 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. Voting-related offenses are generally misdemeanors and are subject to fines of up to \$2,500 and/or imprisonment for up to five years. Certain violations can instead be subject to civil penalties of up to \$5,000 if the violators did not know the act was illegal.

Title 12, Subtitle 2 of the Election Law Article, authorizes a registered voter, if no other timely and adequate remedy is provided, to seek judicial relief from any act or omission relating to an election, whether or not the election has been held, on the grounds that the act or omission (1) is inconsistent with the Election Law Article or other law applicable to the elections process; and (2) may change or has changed the outcome of the election.

A registered voter may seek judicial relief in the appropriate circuit court within the earlier of (1) 10 days after the act or omission or the date the act or omission became known to the petitioner; or (2) 7 days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case 3 days after the election results are certified. The proceeding must be heard and decided without a jury and as expeditiously as circumstances require. The court may order specified relief if an act or omission may change or has changed the outcome of an election, including, if an act or omission may change the outcome of an election, any relief it considers appropriate under the circumstances.

The Maryland Court of Appeals, in *Suessmann v. Lamone*, 393 Md. 697 (2004), has indicated that in order to meet the requirement under Title 12, Subtitle 2 that an act or omission may change or has changed the outcome of an election, a litigant must prove, by clear and convincing evidence, a substantial probability that the illegal action may change or has changed the outcome of the election. The court indicated that a substantial probability, while less than 100%, is significantly more than "more likely than not."

Background: The Attorney General's Task Force on Voting Irregularities indicated in its initial April 2008 report that "organized efforts to suppress or discourage voting have occurred in Maryland." The task force recommended that the Attorney General put in place an ongoing procedure to investigate acts of voter intimidation and to take legal action where appropriate. It was also recommended that the Attorney General consider convening a multistate task force to work with the U.S. Department of Justice (DOJ) regarding broader coordination of legal efforts to prosecute voter suppression activities targeted at minority groups. A similar recommendation that the Attorney General request a DOJ-led multistate task force be convened was made in the task force's final 2010 report, along with a recommendation for legislation making it a felony to knowingly disseminate false information to voters.

Additional Information

Prior Introductions: SB 114 of 2010, a similar bill, passed the Senate and was amended and passed in the House but received no further action. HB 266 of 2010, also a similar bill, passed the House, but received no further action from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: SB 220 (Senator Gladden) – Education, Health, and Environmental Affairs.

Information Source(s): Office of the Attorney General; State Board of Elections; Judiciary (Administrative Office of the Courts); Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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