

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 701
Ways and Means

(Delegate McDonough, *et al.*)

Election Law Transparency Act

This bill establishes a requirement that a voter present a current and valid government issued photo identification in order to vote a regular ballot. A voter who does not have the required identification or indicates a change of residence must vote a provisional ballot. The bill allows a resident who is at least age 18, does not have a driver's license, and produces specified documentation to obtain an identification card from the Motor Vehicle Administration (MVA), for use as a voter identification card, at no charge. The bill also prohibits willfully and knowingly voting or attempting to vote under a false form of identification, with violations subject to existing criminal penalties.

Fiscal Summary

State Effect: General fund expenditures are expected to increase significantly over the course of FY 2012 and 2013 to conduct voter outreach. Costs over the course of FY 2012 and 2013 may total at least \$500,000; however, the local boards of elections are expected to be responsible for a portion of the cost. General fund expenditures may also increase in FY 2012 and 2013 and future years to the extent additional provisional ballots are determined to be needed. Voter outreach costs are expected to diminish in future years. MVA may experience a substantial loss of Transportation Trust Fund (TTF) revenues due to the bill's requirement that identification cards be provided to individuals age 18 and older at no charge. The bill's criminal penalty provisions are not expected to materially affect State finances.

Local Effect: Local government expenditures may increase due to voter outreach, election judge, and/or provisional ballot costs. The bill's criminal penalty provisions are not expected to materially affect local government finances. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential minimal.

Analysis

Current Law: For each individual who seeks to vote, an election judge has to:

- locate the voter's name in the election register or inactive list;
- establish the voter's identity by requesting that the voter state their month and day of birth and comparing the response to the information in the election register;
- verify the address of the voter's residence, unless the voter's personal information has been deemed confidential by the local board, in which case an alternative verification method, established by the State Board of Elections, must be conducted; and
- have the voter sign a voting authority card.

Upon completion of those procedures, a voter is entitled to vote a regular ballot. If a voter's name is not found on the election register or the inactive voter list, the voter is referred to vote a provisional ballot.

Background: A number of states require or request some form of identification from voters before they may vote a regular ballot in an election. All states are also subject to federal requirements under the Help America Vote Act of 2002 (HAVA) that identification be required of first-time voters who register by mail and do not provide verification of their identity with their voter registration.

Approximately half of the states have broader identification requirements than those mandated by HAVA. Florida, Georgia, and Indiana have probably the strictest requirements in that some form of photo identification must be presented in order to cast a regular ballot; otherwise, a voter must cast a provisional ballot. A small number of other states request photo identification, but allow for other means to cast a regular ballot. Other states requiring identification of all voters generally allow for a broader range of identification (often including items such as a utility bill, bank statement, or paycheck) to be provided, not necessarily containing the voter's photo. Maryland is among the states that do not require identification from all voters.

A number of legal challenges have been made to voter identification laws in past years, primarily involving photo identification requirements. Photo identification requirements in Missouri and Georgia were struck down or enjoined from enforcement prior to the November 2006 elections, while challenges to requirements in Arizona (which allows several identification options) and Indiana (which allows photo identification only) were not successful in stopping their implementation for the November 2006 elections. Georgia's photo identification requirement was later restored by court action.

Two consolidated cases challenging Indiana's voter identification law, which has been called the most stringent voter identification law in the country, reached the U.S. Supreme Court during its 2007 term and were decided by the Court in April 2008 (*Crawford, et al. v. Marion County Election Board, et al.*; *Indiana Democratic Party, et al. v. Rokita, et al.*). The Indiana law requires persons voting in person to present federal or State government issued photo identification (with the exception of persons that live and vote in a state licensed care facility) before voting. In a 6-3 decision, the Supreme Court upheld the law. In a separate case (*League of Women Voters v. Rokita*), the Indiana Supreme Court also upheld the law in June 2010, but left open the possibility of future challenges to the law by any voter unlawfully prevented from voting.

State Expenditures:

State Board of Elections

General fund expenditures are expected to increase significantly over the course of fiscal 2012 and 2013 to conduct voter outreach regarding the photo identification requirement and availability of free voter identification cards from MVA prior to the 2011 Baltimore City general election and 2012 presidential primary and general elections. Costs of voter outreach over the course of fiscal 2012 and 2013 may total at least \$500,000. It is expected that local boards of elections will be responsible for part of the cost of a voter outreach campaign, but how the cost will be shared by the State and local boards is uncertain.

Costs may diminish somewhat to conduct voter outreach prior to the 2014 gubernatorial primary and general elections, but are expected to nonetheless be significant. Costs presumably will further diminish in future years as voters become more accustomed to the requirement.

Indiana and Georgia, which have implemented new photo identification requirements in past elections, used various voter outreach approaches including advertising, media relations, direct mailing, public service announcements, and outreach to organizations uniquely suited to communicate with certain groups of voters.

Efforts to redevelop election judge procedures, training materials, and polling place signs, and to train local board staff, are expected to be handled with existing resources. The State shares ballot printing costs with the counties and to the extent additional provisional ballots are determined to be needed to account for an increase in provisional voters due to the identification requirement, State costs could increase.

State Revenues: Special fund revenues are expected to decrease due to a loss of identification card fees paid to TTF. MVA charges a \$15 fee for an identification card

and \$20 for a duplicate/corrected card. MVA issued approximately 127,250 identification cards to persons age 18 and older in fiscal 2010. MVA indicates approximately 76% of the identification cards were new and approximately 24% were duplicates/corrections. MVA, however, does not have information regarding the percentage of the 127,250 cards that were issued free of charge under current fee exemptions (for those 65 and older, legally blind, *etc.*).

For illustrative purposes only, assuming approximately 127,250 identification cards are issued to persons age 18 and older in fiscal 2012, 80% (or 101,800) of those identification cards are issued for a fee, and 76% of the identification cards are new and 24% are replacements, TTF revenues will decrease by approximately \$1.2 million in fiscal 2012, accounting for the bill's October 1, 2011 effective date. Annualized revenue decreases would total approximately \$1.6 million.

Local Fiscal Effect: Expenditures may increase for local boards of elections for the 2011 Baltimore City general election, 2012 presidential primary and general elections, and future elections to account for costs such as voter outreach, training and compensation of additional election judges, and additional provisional ballots.

Of a small number of local boards of elections contacted, some indicate the bill's requirements can be implemented with no fiscal impact, while others anticipate increased costs. Montgomery County, for example, indicated a need for additional election judges, at an increased cost of \$80,400 for the 2012 presidential primary and general elections and Harford County indicated the possibility of increased costs as a result of more people needing to vote provisionally due to the identification requirement. As indicated above, local boards also may bear a portion of the costs of a statewide voter outreach campaign.

Additional Information

Prior Introductions: SB 711 of 2010 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 43/HB 1066 of 2009 received hearings in the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee, respectively, but no further action was taken on either bill. In addition, similar bills were introduced in the 2005 through 2008 sessions.

Cross File: None.

Information Source(s): State Board of Elections; Maryland Department of Transportation (Motor Vehicle Administration); Baltimore, Carroll, Charles, Frederick, Harford, Montgomery, and St. Mary's counties; National Conference of State Legislatures; *Election Law@Moritz*, Ohio State University (<http://moritzlaw.osu.edu/electionlaw>); Department of Legislative Services

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Analysis by: Scott D. Kennedy

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