

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 705
Ways and Means

(Delegate Afzali, *et al.*)

Election Law - Polling Places - Proof of Identity

This bill establishes new voter identification requirements, including that an election judge compare a voter's physical appearance to Motor Vehicle Administration (MVA) driver's license or identification card holder physical identification information in the election register, if available, before authorizing the voter to vote a regular ballot. A voter for whom physical identification information is not available must present one of a number of forms of identification, such as a voter notification card, current utility bill, bank statement, government check, or paycheck.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund expenditures may increase by at least \$830,800 in FY 2013, accounting for quantifiable costs of including physical identification information in electronic poll books and voter education. Implementation of the bill is expected to be a significant initiative and the total extent of the associated costs is uncertain at this time. It is assumed these costs, the allocation of which is also uncertain, are split between the State and counties. Voter education costs are expected to continue, but eventually diminish, in future years.

Local Effect: Local government expenditures also may increase by at least \$830,800 in FY 2013 due to costs associated with upgrading electronic poll books and voter education. Local government expenditures may also increase due to training and compensation of election judges, additional provisional ballots and canvassing costs, costs to send out replacement voter notification cards, and possibly costs for additional electronic poll books. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill requires an election judge, before authorizing a voter to vote a regular ballot, and in addition to asking the voter to state the month and day of the voter's birth, to also compare the voter's physical appearance to physical identification information for the voter in the election register, if physical identification information is available for the voter. MVA must transmit physical identification information to the State Board of Elections (SBE) for each registered voter who is a driver's license or identification card holder. The election register must contain the physical identification information for registered voters who are eligible to vote at each precinct or early voting center.

"Physical identification information" means the following data on file with MVA concerning a driver's license or identification card holder: a photo, sex, age, height, weight, race, and general physical condition.

If physical identification information is not available for a voter, the election judge must require the voter to present a voter notification card, current utility bill, bank statement, government check, paycheck, or other document that SBE approves by regulation that shows the name and address of the voter.

An election judge must refer a voter for provisional ballot voting if:

- a chief election judge determines that the voter's physical appearance does not match the physical identification information for the voter;
- there is no physical identification information available for the voter and the voter is unable to provide another allowable form of identification; or
- the voter indicates a change of residence.

A ballot cast by a voter referred for provisional voting because there was no physical identification information available for the voter and the voter was unable to provide other identification may be counted only if the voter presents an allowable form of identification in person at the office of the local board of elections within seven days of election day.

The bill prohibits a person from willfully and knowingly voting or attempting to vote under a false form of identification, with violations subject to existing criminal penalties.

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 SBE, 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: The National Conference of State Legislatures (NCSL) indicates that 31 states have voter identification laws, and in 15 of those states (Alabama, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin), laws are either already in effect, or have been enacted and have yet to take effect, that require or request a photo ID of voters. In those 15 states, the laws do not turn voters away solely because they do not have a photo ID. The option(s) provided to a voter that is unable to show a photo ID vary. Some of the states with what are considered stricter photo ID requirements allow voters who are unable to show a photo ID to vote a provisional ballot but require the voter to return to election officials within several days after the election to show a photo ID in order for the ballot to be counted. Others simply request a photo ID, but allow voters to vote a regular ballot if they meet other criteria, such as signing an affidavit, without having to later produce a photo ID in order to have their ballot counted.

Rhode Island is not included in the 15 photo ID states, but it recently enacted a voter ID law that requires a nonphoto ID, as of January 2012, and will require photo ID beginning in January 2014.

A number of these state laws, in addition to Rhode Island's, were enacted in 2011. NCSL indicates that new voter ID laws were enacted in 2011 in Kansas, Mississippi (the result of a voter initiative), Rhode Island, and Wisconsin, and Alabama, South Carolina, Tennessee, and Texas amended existing voter ID laws to require photo ID. Also, in a small number of states (Minnesota, Missouri, Montana, New Hampshire, and North Carolina) photo ID laws were passed but then vetoed by the states' Governors.

Alabama, South Carolina, and Texas require preclearance under Section 5 of the Voting Rights Act before their laws can take effect. South Carolina's request for preclearance was denied by the U.S. Department of Justice in December 2011, though NCSL indicates an appeal is likely. Texas is currently involved in the preclearance process. Alabama's photo ID law does not take effect until 2014 and has not yet sought preclearance. Mississippi's new photo ID requirement, established by voter initiative, is a constitutional amendment, and requires both implementing legislation to be passed and subsequent Section 5 preclearance of the law.

State Fiscal Effect: General fund expenditures may increase by at least \$830,750 in fiscal 2013 to implement the bill, consisting only of costs that are able to be quantified at this time. This assumes, for the purposes of this fiscal and policy note, that costs associated with providing physical identification information in the election register, and voter education costs, would be split by the State and counties. It is uncertain, however, how these costs would actually be allocated between the State and counties. **Exhibit 1** shows a breakdown of the costs that have been quantified. The total shown in Exhibit 1, however, likely does not account for the full cost of implementing the bill, as discussed below.

Physical Identification Information

Providing voters' physical identification information in the "election register" (in practical terms, the electronic poll books or "epollbooks," that are used in polling places) is expected to at least require software development and testing for the epollbooks, new data cards for the epollbooks to hold the additional information, and additional server hard drive space. It is expected that the project would qualify as a major information technology development project (as defined in § 3A-301 of the State Finance and Procurement Article), subject to Department of Information Technology (DoIT) oversight, and therefore a \$250,000 annual DoIT oversight cost is included in Exhibit 1. For the purposes of this fiscal and policy note, it is assumed the costs in Exhibit 1 will be incurred in fiscal 2013, though presumably the project could continue into fiscal 2014.

SBE advises that an upgrade of the epollbooks will not be able to be completed in time for the 2012 presidential general election. It is unclear how the bill could otherwise be implemented for the November election. Use of laptop computers (possibly rented) alongside each epollbook that would be able to pull up physical identification information or producing physical identification information for the voters assigned to each precinct in hard copy would entail additional, potentially significant costs. It is also unclear whether such alternate solutions could be implemented in time for the 2012 presidential general election.

SBE also indicates that it is possible the current epollbooks may not be able to handle the upgrade to include the physical identification information of voters, potentially requiring the purchase of new epollbooks at a much more significant cost (roughly estimated by SBE to be in the range of \$10 million).

MVA indicates that it may need to make significant programming changes to its Driver's License System, but the programming could be handled with existing resources.

Exhibit 1
Quantified Costs of HB 705

| <u>Cost</u> | <u>Amount</u> |
|---|----------------------|
| Epollbook software development and testing | \$337,500 |
| New data cards for epollbooks (with greater capacity) | 325,000 |
| Additional hard drive space for SBE servers | 249,000 |
| Department of Information Technology oversight | 250,000 |
| Voter education | <u>500,000*</u> |
| Total | \$1,661,500** |

*Voter education costs may total at least \$500,000.

**Assumed, for the purposes of this fiscal and policy note, to be split by the State and counties.

Source: State Board of Elections, Department of Legislative Services

Voter Education

Costs of voter outreach in fiscal 2013 may total at least \$500,000. 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.

Provisional Ballot Printing

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. For the 2012 presidential primary election, the State is paying \$0.24 and \$0.30 per ballot for ballot printing by two separate vendors and has ordered approximately 470,000 provisional ballots. *For illustrative purposes*, if it was assumed that the number of provisional ballots would need to increase by 50%, State costs would increase by \$28,200 if the cost per ballot was \$0.24.

Other Implementation Efforts

Any costs associated with efforts to redevelop election judge procedures, training materials, and polling place signs, and to train local board staff, have not been quantified. To a certain extent, these efforts may be able to be handled with existing resources.

Criminal Penalty Provisions

The bill's criminal penalty provisions are not expected to materially affect State finances.

Local Fiscal Effect: Local government expenditures may increase by at least \$830,750 in fiscal 2013, due to costs associated with providing physical identification information in the election register and voter education (assumed to be split by the State and counties, as discussed under State Fiscal Effect). Local governments may also incur additional costs for training and compensation of election judges, additional provisional ballots and provisional ballot canvassing costs, costs to send out additional voter notification cards (one of the allowable forms of identification if physical identification information is not available for a voter), and possibly costs for additional epollbooks.

Four jurisdictions contacted, Baltimore City and Anne Arundel, Howard, and Montgomery counties, indicated that additional election judges could or would be needed. The additional potential or expected costs per primary or general election range from \$21,450 (one additional election judge per polling place) in Howard County to \$126,000 (one additional election judge per voter check-in table) in Montgomery County. Howard County also expects it would incur an additional cost of \$20,000 to retrain all election judges prior to the 2012 presidential general election. Other counties could have similar cost increases to the extent they would not already be conducting sufficient retraining of election judges prior to the 2012 presidential general election that the new requirements could be incorporated into.

Baltimore City and Wicomico County both indicated a need for additional provisional ballots and increased staff costs to process the provisional ballots. Wicomico County also indicated that it could incur costs for additional epollbooks (approximately \$54,000 for 30 epollbooks) for checking in voters, due to the requirements of the bill potentially slowing down check-in lines.

To the extent voters request replacement voter notification cards to ensure they have sufficient identification to vote, local board of elections costs could increase. In Anne Arundel County, for example, it would cost approximately \$0.41 per card, including postage, to send out replacement cards.

The bill's criminal penalty provisions are not expected to materially affect local government finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Maryland Department of Transportation; Judiciary (Administrative Office of the Courts); Baltimore City; Anne Arundel, Garrett, Howard, Montgomery, and Wicomico counties; National Conference of State Legislatures; State of Kansas (Office of the Secretary of State); State of Rhode Island (Office of the Secretary of State); State of Wisconsin (Government Accountability Board); Department of Legislative Services

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