Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1078   (Senator Dyson)

Education, Health, and Environmental Affairs   Ways and Means

Election Law - Absentee Ballots - Internet or Facsimile Transmission

This bill requires that a local board of elections send an absentee ballot by the Internet or facsimile transmission, if requested by an absent uniformed services voter or an overseas voter, and, by the Internet, if requested by a voter with disabilities for whom Internet delivery will assist the voter to vote independently using an online ballot marking tool. Otherwise, absentee ballots must be sent by mail. The State Board of Elections (SBE) must provide an optional online ballot marking tool, which the bill specifies is not subject to voting system certification requirements, and if an absentee ballot is sent by the Internet or facsimile transmission, an envelope template, oath, and instructions must be provided. SBE must report on the implementation of the bill to specified legislative committees by January 31, 2013.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: The bill may help to ensure that existing federal grant funding for an online absentee ballot delivery system for military and overseas voters can continue to be used, but is not otherwise expected to have a direct, material effect on State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: If requested by an absent uniformed services voter or an overseas voter, as those terms are defined under the federal Uniformed and Overseas Citizens Absentee Voting Act, a local board of elections must send an absentee ballot by the Internet or facsimile transmission. In addition, if requested by a voter with disabilities, a local board of elections must send an absentee ballot by the Internet if the voter acknowledges that delivery by the Internet will assist the voter to vote independently using a specified accessible ballot marking tool. Otherwise, if an applicant qualifies to vote by absentee ballot, the local board of elections must send the ballot by mail.

SBE must provide an optional online ballot marking tool for a voter with disabilities and for an absent uniformed services voter or an overseas voter who elected to have an absentee ballot sent by the Internet. Unless required by the U.S. Election Assistance Commission (EAC), the online ballot marking tool is not subject to voting system certification requirements specified under State law. If an absentee ballot is sent by the Internet or facsimile transmission, the local board of elections must provide the voter with an envelope template, the oath prescribed by SBE, and instructions for completing and mailing the absentee ballot.

On or before January 31, 2013, SBE must report to the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee on the implementation of the bill.

Current Law: An individual may vote by absentee ballot except to the extent preempted under an applicable federal law. If an applicant for an absentee ballot qualifies to vote by absentee ballot, the local board of elections must send the ballot as soon as practicable after receipt of the request, or, if the ballots have not been received from the printer, as soon as practicable after the local board receives delivery of the ballots.

Subject to certain requirements, a qualified applicant for an absentee ballot may designate a duly authorized agent to pick up and deliver an absentee ballot for the voter. A voter who requires assistance in casting an absentee ballot by reason of disability, inability to write, or inability to read the ballot may be assisted by any individual other than a candidate on the ballot, the voter's employer or an agent of the employer, or an officer or agent of the voter's union.

An absentee ballot must be accompanied by instructions for marking and returning the ballot and specified envelopes for returning the ballot, on one of which must be printed an oath prescribed by SBE.

Background: SBE received a federal grant of $653,719 in 2011 from the Federal Voting Assistance Program within the Department of Defense to enable military and overseas voters from the State to register to vote online, request an absentee ballot online, and retrieve and mark ballots online. A portion of this funding is dedicated to establishing an online ballot delivery system that will consist of a ballot marking wizard, allowing a voter to mark their ballot and then print it out to return by mail. The project is underway and a portion of the funding has been spent. The new system is expected to be ready for the 2012 presidential general election.

SBE first implemented an online absentee ballot delivery system for the 2010 elections, but has noted some concerns about the process, including the need to duplicate, by hand, the mailed return ballot onto ballot paper that can be read by the optical scan voting machines. The new system will include a bar code on the printed ballot that will allow for election officials to automatically recreate the ballot with a ballot-on-demand printer on ballot paper that can be read in the optical scan machines. Election officials will compare the ballot returned by the voter to the ballot generated from the bar code during canvassing. The new system will prevent over-votes, notify voters of under-votes, and prevent questions of voter intent arising from ballots marked by hand.

An issue has been raised of whether the ballot marking wizard would need to be certified as a voting system under State law requirements for certification of voting systems. The bill would specify that it does not need to be, unless required by EAC. One of the State voting system certification requirements is that the voting system be examined by an independent testing laboratory approved by EAC and shown by the testing laboratory to meet specified federal standards. EAC, however, has advised SBE that web applications such as online ballot marking wizards do not meet the definition of a voting system under federal standards and therefore are not considered eligible for testing and certification under the EAC program.

State Fiscal Effect: It is unclear whether the implementation of the online absentee ballot delivery system may be prevented from going forward in the absence of this bill, due to the issue of certification of the ballot marking wizard. However, the bill would clarify the issue, specifying that it does not have to be certified, potentially helping to ensure the continued implementation of the project and use of the federal grant funding.

Additional Information

Prior Introductions: None.

Cross File: None.

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