

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 73

(Delegate Rosenberg, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

Voters' Rights Protection Act of 2015

This bill authorizes the Attorney General and, alternately, in certain circumstances, the State Prosecutor, to seek injunctive relief to prohibit a person from committing or continuing to commit specified elections violations.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures may increase due to a need for additional Court of Appeals resources. The extent of any increase in expenditures depends on the amount of direct appeals under the bill.

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

Small Business Effect: None.

Analysis

Bill Summary: The 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. However, the State Prosecutor, not the Attorney General, is authorized to seek injunctive relief if the Attorney General is a candidate in a contest on the ballot in an election and a violation is committed by the Attorney General, a candidate opposing the Attorney General in a contest on the ballot, or a person acting on behalf of the Attorney General or an opposing candidate.

Injunctive relief may only be granted pursuant to the bill (1) to prevent a violation from affecting a pending election and (2) based on a showing by clear and convincing evidence that a violation is imminent or is being committed. 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.

An appeal of a decision of the circuit court under the bill must be taken directly to the Court of Appeals within five days of the date of the decision. The Court of Appeals must give priority to hear and decide an appeal as expeditiously as the circumstances require.

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 \$5,000 and/or imprisonment for up to five years. Certain violations can instead be subject to civil penalties of up to \$5,000 if the violator 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) seven days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case three 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.

Under the federal law referenced in the bill’s preamble, 42 U.S.C. § 1971(c), the U.S. Attorney General may institute an action for preventive relief when a person has engaged or there are reasonable grounds to believe the person is about to engage in specified acts, including depriving a person of the right to vote or intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce another person for the purpose of (1) interfering with the person’s right to vote or to vote as the person chooses or (2) causing the person to vote or not vote for a federal candidate.

State Expenditures: General fund expenditures may increase due to a need for additional Court of Appeals resources, including clerical and law clerk support, to handle direct appeals to the Court of Appeals (from any of the 24 circuit courts) under the bill, along with the court’s existing caseload. The extent of the need for additional resources, however, cannot be reliably estimated due to the uncertainty of the amount of litigation that will result from the bill. *For illustrative purposes only*, general fund expenditures increase by over \$100,000 annually for one additional clerical position and one additional law clerk.

Additional Information

Prior Introductions: HB 224 of 2014 received a hearing in the House Ways and Means Committee, but no further action was taken. HB 220 of 2013 passed the House and received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. In addition, similar bills were introduced in the 2010 through 2012 sessions.

Cross File: SB 192 (Senator Pinsky) – Education, Health and Environmental Affairs.

Information Source(s): State Board of Elections; State Prosecutor's Office; Judiciary (Administrative Office of the Courts); Charles, Frederick, and Montgomery counties; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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