

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1056 (Delegate Flanagan, *et al.*)  
 Judiciary and Ways and Means

Election Law - Court Offices - Nonpartisan Elections

This bill requires clerks of the court, judges of the orphans’ courts, registers of wills, sheriffs, and state’s attorneys to be elected on a nonpartisan basis and candidates for the offices to be nominated by primary election. In a primary election to nominate a candidate for any of those offices, any registered voter of the county, regardless of party affiliation or nonaffiliation, is eligible to vote in the contest. The bill specifies additional procedures for the nomination of candidates and the election of a nominee at the general election.

Fiscal Summary

**State Effect:** General fund expenditures increase by at least \$18,300 in FY 2018 for the State’s share of the cost of printing additional ballots in counties that would not otherwise print nonpartisan ballots for the 2018 gubernatorial primary election and programming changes to the State Board of Elections’ (SBE) election management system. Similar general fund expenditure increases for ballot printing occur in future years in which a gubernatorial primary election is held.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	18,300	0	0	0	13,300
Net Effect	(\$18,300)	\$0	\$0	\$0	(\$13,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Local government expenditures increase by at least \$18,300 in FY 2018 for local boards of elections’ share of the cost of printing additional ballots and programming changes. Additional specimen ballot costs are also expected to be incurred, as discussed below. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** None.

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## **Analysis**

**Bill Summary:** The bill requires clerks of the court, judges of the orphans' courts, registers of wills, sheriffs, and state's attorneys to be elected on a nonpartisan basis. A candidate for election to those offices files a certificate of candidacy, is certified to the ballot, appears on the ballot, is voted on, and is nominated and elected, all without party designation or regard to party affiliation.

Candidates are nominated at the primary election, unless there are no more than two candidates who have filed certificates of candidacy for the contest, in which case each candidate is nominated for the general election. Any registered voter of the county, regardless of party affiliation or nonaffiliation, is eligible to vote in the contest for nomination for one candidate.

The two candidates who receive the highest number of votes in the primary election are the nominated candidates for the office. If two or more candidates are tied for the second most votes, each of the candidates is nominated. The bill specifies rules governing circumstances in which a candidate or nominee dies, becomes disqualified, or declines nomination.

In the general election, a voter may vote for one nominee and the nominee who receives the highest number of votes is elected. If two or more nominees tie for the most number of votes, the office is considered vacant and the vacancy is filled (1) as if it occurred during the term of the office for which the election is being held and (2) by the selection of one of the nominees who ties in the general election.

**Current Law/Background:** In general, nominations for State and county offices must be made by party primary, for candidates of a principal political party; by petition, for candidates not affiliated with any political party; or in accordance with the constitution and bylaws of the political party, for candidates of a political party that does not nominate by party primary. The Republican and Democratic parties (the principal political parties) currently have "closed" primaries, only allowing voters affiliated with each party to vote in the party's primary elections to nominate candidates for the general election. Unaffiliated and third-party voters, therefore, are not able to vote in primary elections, with the exception of any nonpartisan races being voted on in the election, such as local board of education races. The offices affected by the bill are voted on in the gubernatorial elections.

Under the Election Law Article, unless otherwise provided in specified provisions of the Education Article, local boards of education are elected on a nonpartisan basis, in a similar

manner as that prescribed for the offices affected by the bill. Currently, 17 counties have local boards of education elected through contested elections and Caroline, Harford, and Prince George's counties have partially elected boards of education.

**State Fiscal Effect:** General fund expenditures increase by at least \$18,300 in fiscal 2018 and every fourth following fiscal year (when gubernatorial primaries occur). This estimate reflects (1) the State's share of the cost of printing additional ballots for voters that are not registered with the Republican or Democratic parties, in jurisdictions which do not have an elected local board of education (Baltimore City and Anne Arundel, Baltimore, and Wicomico counties) and, therefore, are not already providing nonpartisan ballots to voters not registered with the Republican or Democratic parties, at gubernatorial primary elections and (2) the State's share of an assumed minimum programming cost to make changes to SBE's election management system. The estimate assumes that a number of ballots equivalent to at least 50% of the registered voters not affiliated with the Republican or Democratic parties are printed in those counties. Turnout of registered voters not affiliated with the Republican or Democratic parties, to vote on nonpartisan local board of education races, has been relatively low for gubernatorial primary elections in the past (generally below 10%), but presumably local boards of elections will need to print an amount greater than the eventual turnout for the nonpartisan races under the bill to avoid shortages at any voting location.

General fund expenditures may further increase for nonpartisan ballots for a gubernatorial primary election if any jurisdictions that have elected local boards of education would not otherwise have a nonpartisan ballot because there are not more candidates for nomination than the number of nominations available for board of education seats in the primary election. Under State election law, in board of education primary elections, the candidates, equal in number to twice the number of offices to be filled, who receive the largest number of votes in the primary election are the nominated candidates. In past elections, board of education candidates have not been included on a primary election ballot when the number of candidates is equal to or less than the number of nominations available. In the 2014 gubernatorial elections, for example, Caroline, Cecil, Dorchester, Kent, and Somerset counties held board of education elections, with nominees appearing on the general election ballot, but did not have a nonpartisan primary ballot.

**Local Fiscal Effect:** Local government expenditures increase by at least \$18,300 in fiscal 2018 and every fourth following fiscal year, reflecting the local boards of elections' share of (1) the cost of printing additional ballots for voters that are not registered with the Republican or Democratic parties and (2) programming changes to SBE's election management system.

Local boards of elections are also expected to incur costs for sending additional specimen ballots. Pursuant to State law and SBE regulations, for a primary election, specimen ballots

are one of two methods, along with mass (newspaper) publication, that local boards of elections can use to provide notice of elections to voters. If a local board of elections provides notice by mailing specimen ballots, a specimen ballot must be mailed to all registered voters in the county who are eligible to vote in the election. *For illustrative purposes*, assuming a cost of at least \$0.30 per specimen ballot, for printing and postage, specimen ballot costs in Baltimore City increase by at least \$15,200 to mail specimen ballots to the city's 50,700 registered voters not affiliated with the Republican or Democratic parties. Baltimore City has indicated it incurs more significant per specimen ballot cost, but a minimum \$0.30 per specimen ballot is consistent with past estimates provided by other jurisdictions. Baltimore City has also indicated it will need additional election judges at a cost of \$97,700 (two extra judges per polling place), but the Department of Legislative Services advises it is unclear whether that level of additional election judges will be needed if turnout of registered voters not affiliated with the Republican and Democratic parties is relatively low, consistent with turnout by those voters in other jurisdictions for primary election board of education races.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Board of Elections; Baltimore City; Frederick, Kent, Montgomery, Washington, and Worcester counties; Judiciary (Administrative Office of the Courts); Register of Wills; State's Attorneys' Association; Department of Legislative Services

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