

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 57 (Delegate Rosenberg)
 Ways and Means

Voters' Rights Protection Act of 2020

This bill establishes requirements that must be met in order for a local board of elections to implement specified changes in voting locations. The bill also requires that a local board attempt to contact a voter that has failed to sign an absentee ballot application or absentee ballot envelope, to obtain their signature, and allows for an absentee ballot to be considered timely if the ballot envelope is postmarked the day after Election Day. The bill prohibits specified video recording, other than for official security purposes, of voters approaching and depositing ballots at a ballot drop box. Finally, the bill establishes requirements regarding anonymous foreign political communications, and false statements regarding voting requirements, on specified online social networks and search engines. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$222,600 in FY 2022, with ongoing costs in future years. Special fund penalty revenues may increase.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	-	-	-	-	-
GF Expenditure	\$222,600	\$191,300	\$221,400	\$202,500	\$233,800
Net Effect	(\$222,600)	(\$191,300)	(\$221,400)	(\$202,500)	(\$233,800)

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

Local Effect: Local government expenditures may increase in some counties, as discussed below. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Covered Changes in Voting Locations

The bill establishes requirements that must be met in order for a local board of elections to implement a “covered change in voting locations,” which is defined as any change that reduces, consolidates, or relocates early voting centers or election day polling places in any census tract within which one or more racial minority groups or language minority groups represent 20% or more of the voting age population.

The local board may not implement a covered change in voting locations unless:

- the local board has notified affected voters and local civil rights advocacy organizations by whatever means are most effective;
- the local board has held a specified public hearing;
- the county legislative body has passed a resolution approving the change;
- the State Board of Elections (SBE) has contracted with another entity to complete a thorough and independent analysis, and the analysis demonstrated that the change will not have a discriminatory impact; and
- the local board obtains a declaratory judgment from a court, or a written certification from the Attorney General, that the change will not have a discriminatory impact.

If a local board determines that an emergency exists, it may apply to the circuit court or the Attorney General for a waiver of one or more of the above requirements according to specified procedures and limitations. The requirements may not be waived or altered under existing provisions allowing for (1) the Governor to specify alternate voting locations in the event of a state of emergency or (2) a circuit court to take necessary action when other emergency circumstances interfere with the electoral process.

Absentee Ballots

The bill requires a local board to attempt to contact a voter to obtain their signature on:

- a paper absentee ballot application that the voter failed to sign (so that the application can be processed in a timely manner); and
- an absentee ballot envelope on which a voter failed to sign the oath (so that the ballot may be counted).

The bill modifies a requirement that an absentee ballot be rejected if the voter failed to sign the oath on the ballot envelope, so that it instead requires that the ballot be rejected if the voter failed to sign the oath *and failed to correct the omission before the conclusion of the canvass*.

The bill also requires that an absentee ballot be considered timely if the ballot envelope is postmarked no later than the day after Election Day.

Prohibition against Recording Voters at a Ballot Drop Box

The bill prohibits a person from using a camera, a cellular telephone, or another device capable of recording video to record voters as they approach or deposit ballots in a ballot drop box, unless the person is engaged in surveillance of the ballot drop box that is officially approved by the local board of elections to ensure the security of the ballot drop box.

Anonymous Foreign Political Communications and False Statements

The bill requires “covered websites” to make reasonable efforts to detect specified anonymous foreign political communications and false statements regarding voting requirements that are disseminated through their websites and to report them to SBE. SBE must then – in a specified objective, proportional manner – disseminate that information to the public, through its website, media outlets, and social media and communicate accurate information designed to correct any false statements regarding voting requirements. Among other requirements, the information communicated by SBE must, to the extent practicable, be communicated in a manner that SBE determines will reach the persons who received the anonymous foreign political communication or false statement regarding voting requirements.

A covered website is an online social network or search engine that has 50 million or more unique monthly U.S. visitors or users for a majority of months during the immediately preceding 12 months. It does not include specified websites used primarily to disseminate news, commentary, or editorial content.

In addition to any other sanction provided by law, if a covered website fails to file a report, SBE may assess a civil penalty against the covered website of up to \$50,000. A penalty is the joint and several liability of the person who operates the covered website and any person exercising direction or control over the activities of the operator of the website. Penalties are distributed to the Fair Campaign Financing Fund.

Current Law:

Voting Locations

Precincts and Polling Places

State law authorizes local boards of elections to (1) create and alter the boundaries for precincts in the county; (2) designate the location for polling places in any election district, ward, or precinct in the county; and (3) combine or abolish precincts. Each polling place must be located as conveniently as practicable for the majority of registered voters assigned to the polling place. Changes may not be made during specified times immediately prior to a primary election, through the general election, and before and after the decennial census, without specified approval from the State Administrator of Elections and/or SBE. If a local board creates a new precinct or changes precinct boundaries, SBE regulations require it to (1) do so by adoption of a written resolution that states the purpose of the change, contains a written description of the precinct boundaries, and is accompanied by a map of the area involved, and (2) provide specified notice to affected voters of the change. The regulations also require a local board to provide notice to affected voters of a change in the location of a polling place.

Early Voting Centers

State law requires SBE, in collaboration with the local board in each county, to designate each early voting center in that county no later than six months before a primary election. Early voting centers must meet requirements applicable to polling places, including the requirement that a polling place be located as conveniently as practicable for the majority of registered voters assigned to the polling place. SBE regulations establish a process for local boards to submit specified information to SBE on proposed early voting centers, which must include information on whether the centers are located within specified distances of where specified percentages of the registered voters in the county live.

Change in Administrative Policy Affecting Voting Rights

SBE and local boards of elections may not consider a change in an administrative policy affecting voting rights (including an action relating to the location of a polling place or early voting center) unless the board has posted a prominent public notice on its website at least 48 hours in advance of the meeting, and SBE and, if applicable, the local board, posts notice of the change within 48 hours of its adoption.

Absentee Ballots

An absentee (mail-in) ballot must be requested in writing (there are State and federal forms that can be used) or a request can be submitted online through the SBE website. SBE regulations establish that, if an absentee ballot application is timely, but any of the required information is missing, the election director of the local board of elections must attempt to contact the voter to correct the omission.

A local board of elections must reject an absentee ballot if the voter failed to sign the oath on the ballot envelope.

State law requires that SBE establish guidelines for the administration of absentee voting by the local boards, which must provide for, among other things, determining timeliness of receipt of applications and ballots. SBE regulations establish that an absentee ballot that is returned by mail is timely if it was mailed on or before election day, verified by a postmark or by the voter's affidavit if the return envelope does not contain a postmark or the postmark is illegible, and is received by the local board office by 10:00 a.m. on the second Friday after an election.

Regulation of Online Political Communications

Under State law, online political communications can be subject to various requirements for disclosure of those responsible for the communications. Among those requirements, campaign material (material that relates to a candidate, prospective candidate, or the approval or rejection of a question or prospective question), including campaign material transmitted through electronic media, must include a disclosure of those responsible for the material (an "authority line"). Chapters 833 and 834 of 2018 require that an online platform maintain specified information on those responsible for specified paid online campaign material. The online platform must make certain information publicly available and other information available to SBE on request. (The State is enjoined from enforcing those provisions of Chapters 833 and 834 against various media, broadcasting, and cable entities under a permanent injunction in *Washington Post v. McManus*.) Chapter 216 of 2020 requires that use of a "bot" (a specified automated online account) to publish, distribute, or disseminate campaign material online be disclosed in the campaign material.

Though not limited to online political communications, Chapters 833 and 834 also prohibit the purchase or sale of campaign material or an electioneering communication through the use of any currency other than U.S. currency.

State Expenditures: General fund expenditures increase by at least \$222,596 in fiscal 2022, which accounts for a 90-day start-up delay. The estimate reflects the cost of (1) a portion of an Assistant Attorney General position (0.5) and a portion of an

administrative aide position (0.5) in the Office of the Attorney General to handle certifications and waivers for covered changes in voting locations; (2) SBE contractual services costs for independent analyses of covered changes in voting locations; (3) an SBE contractual investigator to ensure compliance with the “covered website” provisions of the bill; and (4) costs of paid social media posts to target information disseminated by SBE toward persons who received an anonymous foreign political communication or false statement regarding voting requirements. The estimate includes salaries, fringe benefits one-time start-up costs, and ongoing operating expenses.

The estimated cost of \$50,000 in fiscal 2022 for SBE contractual services for independent analyses of covered changes in voting locations is an approximate estimate of an amount that should cover analysis of 10 to 20 covered changes in voting locations. The cost may be higher if there are a greater number of covered changes in voting locations in fiscal 2022 (when redistricting occurs) or future years. Montgomery County alone indicates that it can relocate in the range of 40 polling places in an average redistricting year, as a result of modified districts or existing polling places becoming unavailable.

Positions	2
Salaries and Fringe Benefits	\$131,343
SBE Contractual Services	50,000
Paid Social Media	25,000
Other Operating Expenses	16,253
Total FY 2022 State Expenditures	\$222,596

Future year expenditures reflect full (annualized) salaries with annual increases and employee turnover and ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

The Office of the State Prosecutor (OSP) has indicated that it will need an additional attorney (at a cost of approximately \$93,000 in fiscal 2022 and just over \$110,000 in future years) if it needs to litigate cases where SBE has imposed a penalty on a covered website for noncompliance with the bill’s requirements, and the covered website elects to stand trial. This cost has not been included in the estimate, only because it is not clear to what extent penalties will need to be imposed (in part because the bill applies to a limited number of websites) and, if imposed, whether the penalties will need to be litigated to a significant extent by OSP.

State Revenues: Special fund (Fair Campaign Financing Fund) revenues may increase to the extent penalties are collected under the bill. The extent of any increase cannot be reliably estimated.

Local Fiscal Effect: Local government expenditures may increase in some counties to implement the bill's requirements applicable to covered changes in voting locations. Of a small number of counties contacted, Harford, Talbot, and Wicomico counties indicated the bill has minimal or no impact. Montgomery County, however, expects personnel costs to increase in fiscal 2022, and future fiscal years that include primary elections, due to added work to modify voting locations when necessary, if changes are not approved under the process established by the bill and have to be reevaluated. The county also expects to incur costs to notify voters of changes in advance (approximately \$1,815 in mailing costs for a typical precinct) and to pay the board attorney for work associated with the approval process.

The requirements that local boards of elections contact voters who failed to sign a paper mail-in ballot application or a mail-in ballot envelope are not expected to materially affect local government finances. SBE indicates that similar efforts were implemented in 2020 and presumably those continue in future elections even in the absence of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Office of the Attorney General; Office of the State Prosecutor; Judiciary (Administrative Office of the Courts); Harford, Montgomery, Talbot, and Wicomico counties; Schaefer Center for Public Policy; Department of Legislative Services

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