



HB 1314: Election Law—Voting Systems—Accessibility for Voters With Disabilities

Ways & Means Committee, March 3, 2020

Position: FAVOR WITH AMENDMENTS

Chair Kaiser and Committee Members,

This bill seeks to address the problem that voters who use the ExpressVote Ballot-Marking Device (BMD) have a ballot that is different in size, shape, and format from those who mark their ballots by hand. Since voters with many types of disabilities need to use these devices to mark a paper ballot, some disability advocates fear that this provides a means to determine how the disabled community voted, or potentially even how a specific voter voted.

We completely support the concerns of voters with disabilities about the privacy of their votes. Voting by secret ballot is fundamental to American democracy because it prevents voter intimidation and coercion. Therefore, we support the requirement in this legislation that ballots marked by the BMD must match ballots marked by hand.

Not only do the ballots produced by the current BMDs look different from the ballots marked by hand, they also are counted differently. Instead of reading the darkened ovals as on the hand-marked ballots, they read a proprietary barcode (see attached diagram). However, voters cannot read this barcode to verify that their votes were recorded accurately. Instead the voter reads the tiny text beneath the barcode and has to trust that the text and the barcode say the same thing. This means that these ballots are not voter-verifiable, as required by state law.

These ballots are also audited differently in the automated audits performed after each election. The hand-marked ballots are re-interpreted from the marks the voter made on the ballot to see if the scanner interpreted the voter's marks correctly. But the BMD ballots count only from the barcodes and no check is performed to ensure that they match the text the voter was able to verify. This means that the BMD can "lie" to the voter using it by creating a barcode that does not match the voter-verifiable text and it would probably go undetected.

There are voting systems on the market that create ballots from the BMD that match those marked by hand. Some of these were not available when the state leased the current voting system, and we support transitioning to such a voting system when the lease expires on our current equipment at the end of this year.

We do not support the requirement that all voters must use a ballot-marking device. That would necessitate, as the fiscal note says, at least 18,000 additional BMDs to be added to the current stock of about 1,900 BMDs statewide, which would more than double the current costs

of MD's voting system. Even that quantity probably would not be enough to accommodate all voters during peak voting hours, and we know from past experience with our previous touch-screen voting system that when voters are forced to wait an hour or more to vote, some are disenfranchised. Elderly or infirm voters, those waiting in line with small children, or those who have to report for shift work or pick up children by a specific time are examples of voters often unable to stay long enough to vote. The rights of voters with disabilities must be balanced with the rights of all voters to use an efficient and cost-effective voting system.

While we do not support having all voters use BMDs, until we have a voting system where BMDs produce ballots that are the same as those marked by hand, we do support specifying the minimum number of voters in each precinct who must use the existing BMDs to preserve the privacy of all voters who use it. Last summer the SBE issued regulations specifying that at least 5 voters in each precinct must use the BMD. In the first election conducted since that regulation went into effect, the CD-7 special election in early February, compliance was 100% in 2 of the 3 jurisdictions (Baltimore and Howard Counties) and 97% in the third (Baltimore City), according to the SBE's [February meeting packet](#).

The amendments we propose are:

- 1) Strike "(I) EACH VOTER SHALL USE A BALLOT MARKING DEVICE THAT IS ACCESSIBLE TO VOTERS WITH DISABILITIES TO VOTE AT AN EARLY VOTING CENTER OR AN ELECTION DAY POLLING PLACE; AND"
- 2) Retain this language: (II) A BALLOT CAST BY A VOTER WITH A DISABILITY MAY NOT BE SET APART OR DISTINGUISHABLE FROM, IN SIZE AND FORM, A BALLOT CAST BY A VOTER WITHOUT A DISABILITY;
- 3) Add requirements that the BMD ballot:
 - must be voter-verifiable through both visual and nonvisual means, and
 - the marks verifiable by the voter must be the same marks used to tabulate the votes.
- 4) Change the effective date to January 1, 2022.

We urge you to amend and pass this legislation to move Maryland forward to a voting system that is fairer and more verifiable, yet would be at least as cost-effective and efficient as our current voting system.

With greatest respect for all that you do to improve our elections,

Robert Ferraro and Rebecca Wilson, Co-Directors
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