

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 102  
Ways and Means

(Delegate Rosenberg, *et al.*)

Education, Health, and Environmental Affairs

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**Voter's Rights Protection Act of 2008**

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This bill makes various changes to State election law relating to provisional voting, election judge training and conduct, campaign material, polling place procedures, election challengers and watchers, and prohibited actions.

The bill takes effect July 1, 2008; however, provisions relating to provisional voting, election judge training and conduct, polling place procedures, and election challengers and watchers take effect January 1, 2009.

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**Fiscal Summary**

**State Effect:** Changes to the election judges' manual and training could be handled with existing resources since the provisions prompting those changes take effect after the 2008 general election. Potential increase in general fund revenues and expenditures due to the bill's criminal/civil offenses.

**Local Effect:** Any costs associated with changes to election judge procedure and any costs to the courts associated with the right of action for preventive relief authorized under the bill are not expected to significantly affect local government finances. Potential minimal increase in revenues and expenditures due to the bill's criminal/civil offenses.

**Small Business Effect:** None.

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## Analysis

### **Bill Summary:**

#### *Provisional Voting*

If a chief election judge determines that there is a problem outside of a voter's control that causes the voter to be unable to vote a regular ballot, the individual is eligible to cast a provisional ballot.

#### *Election Judge Training and Conduct*

The bill requires the State Board of Elections to ensure that the election judge training program incorporates a thorough and detailed treatment of the duties and limitations of election judges under State and federal election law. In addition, election judges must be trained to effectively operate the voting system and all its features. The bill also clarifies that an election judge may only require a voter to present photo identification to the extent authorized or required by State or federal law.

#### *Campaign Material*

A person, political committee, campaign finance entity, or other organization or entity may not distribute, disseminate, or publish or cause to be distributed, disseminated, or published specified campaign material knowing it is false and with the intent to influence a voter or to prevent the voter from exercising the right to vote in an election. A court may only impose an existing civil penalty for an unknowing violation of this provision if it finds by clear and convincing evidence that a violation occurred. A court also may only issue a specified injunction against a violation if it finds by clear and convincing evidence that a violation is occurring or about to occur, an injunction is necessary to accomplish the State's interest, and other available alternatives are insufficient to accomplish the State's interest.

#### *Polling Place Procedures*

If a polling place is closed for more than one hour between 7 a.m. and 8 p.m. on an election day, the local board must require the election judges in the polling place to keep the polling place open for an additional period of time equal to the period that the polling place was closed, but not more than two hours. The local board must promptly notify the State Administrator of Elections and, consistent with the instructions from the State Administrator, notify the public of the extended voting hours. A vacancy in the polling place staff may not delay the opening of a polling place.

Consistent with the election judge manual, the chief election judge must keep a log of issues arising in the polling place.

### *Election Challengers/Watchers*

A challenger or watcher may not attempt to physically handle any voting equipment; make a challenge indiscriminately, without good cause, or for the purpose of annoyance or delay; or interfere with or unduly delay the work of an election judge.

### *Prohibited Actions*

Under the bill's requirements, a person may not willfully and knowingly engage in conduct that results or has the intent to result in the disruption of polling place activities.

The bill allows for the Attorney General or any registered voter to institute an action in circuit court for preventive relief when a person, political committee, campaign finance entity, or other organization or entity has engaged, or there are reasonable grounds to believe the person or entity is about to engage, in the above-mentioned disruption of polling place activities or other voting-related offenses specified under State election law. The circuit court must hear and determine the matter immediately upon the filing of an application for preventive relief and may exercise its jurisdiction without regard to whether a person asserting a right has exhausted administrative or other remedies.

### **Current Law:**

#### *Provisional Voting*

SBE is responsible for establishing guidelines for the administration of provisional ballot voting by local boards. Under State law, an individual is eligible to vote a provisional ballot if the individual declares in a written affirmation that the individual is a registered voter and eligible to vote in the election and the individual's name does not appear on the precinct register, an election official asserts the individual is not eligible to vote, or the individual does not have the necessary identification.

#### *Election Judge Training*

SBE is responsible for developing a training program for election judges, upon which the local boards base the training they conduct for their judges. Chapter 547/548 of 2007, which is contingent on the appropriation of sufficient funding in fiscal 2009, requires SBE to provide uniform statewide training for election judges on the voting system,

including training on all features providing access to voters with disabilities and the rights of voters with disabilities.

### *Voter Identification*

Under State law, an election judge is required to establish the identity of a voter by requesting the voter to state the month and day of the voter's birth. The election judge must also verify the voter's residence address unless the voter's personal information has been deemed confidential by a local board, in which case an alternative verification method established by SBE is used. Under the Help America Vote Act (HAVA), a first-time voter who registers by mail, and does not provide specified identification information with their registration, must provide one of various specified forms of identification in order to vote in an election for federal office.

### *Polling Places*

Polling places are required to be open from 7 a.m. until 8 p.m. on an election day. A voter who has appeared at the polling place by 8 p.m. must be allowed to vote.

### *Challengers/Watchers*

A person's right to vote may only be challenged on the basis of his/her identity. State law allows for challengers and watchers who are registered voters and designated by SBE; a local board; a candidate; a political party; or any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot to be present at a polling place.

Challengers and watchers may enter a polling place a half hour before polls open and remain in the polling place until the polls are closed and election judges leave the polling place. Challengers and watchers generally may not interact with voters in the polling place or handle any original election documents. An election judge also may permit an individual who is not a challenger or watcher to enter the polling place to challenge a voter, after which the individual must leave the polling place.

### *Prohibited Actions/Penalties*

Various voting-related offenses are specified in State law, 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; and • engaging in conduct that denies or abridges, or has the intent to deny or abridge, a person's right to vote on account of race,

color, or disability. These offenses are misdemeanors and are subject to a fine of up to \$2,500 and/or imprisonment for up to five years.

Except as otherwise provided for specific offenses, a person who knowingly and willfully violates a provision of Title 13 of the Election Law Article (within which the bill's provisions relating to distribution, dissemination, or publication of specified campaign material are included) is guilty of a misdemeanor and on conviction is subject to a fine of up to \$25,000 and/or imprisonment for up to one year. An unknowing violation is subject to a civil penalty of up to \$5,000. The Secretary of State may also seek an immediate injunction against a violation of Title 13.

**Background:** During the 2006 primary election in Maryland, difficulties, including insufficient recruitment and absenteeism of election judges, resulted in a delay in the opening of some polling places, and challenges attributed to inadequate training for election judges were experienced. By most accounts, these issues were addressed and largely corrected prior to the general election.

With respect to the delayed opening of polling places as a result of absent election judges, the Office of the Attorney General gave advice after the 2006 primary election that a polling place may open for voting despite one or more election judges failing to appear.

Equipment-related issues during the 2006 primary election also resulted in the need for provisional ballots to be used to vote in many situations in place of regular ballots cast on voting machines.

**State Revenues:** General fund revenues could increase minimally as a result of the criminal/civil offenses established under the bill from cases heard in the District Court.

### **State Expenditures:**

#### *Incarceration Costs*

General fund expenditures could increase minimally as a result of the incarceration penalties associated with the criminal offenses established under the bill due to more people being committed to Division of Correction facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds,

personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

#### *Office of the State Prosecutor*

General fund expenditures could increase for the Office of the State Prosecutor to investigate complaints associated with the offenses established under the bill. The number of complaints that would need to be investigated and any associated increase in general fund expenditures, however, cannot be reliably estimated. In fiscal 2007, which included the 2006 gubernatorial elections, the State Prosecutor received 469 election law complaints.

**Local Revenues:** Revenues could increase minimally as a result of the criminal/civil offenses established under the bill from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the incarceration penalties associated with the criminal offenses established under the bill. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

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### **Additional Information**

**Prior Introductions:** Similar bills were introduced in 2007 as SB 386 and HB 309. SB 386 had a hearing in the Senate Education, Health, and Environmental Affairs Committee but no further action was taken. HB 309 was passed by the House but no action was taken by the Senate.

**Cross File:** SB 54 (Senator Gladden, *et al.*) – Education, Health, and Environmental Affairs.

**Information Source(s):** State Board of Elections; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the State Prosecutor, Anne Arundel, Garrett, Kent, Montgomery, Washington, and Worcester counties; Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2008  
mam/ljm Revised - House Third Reader - March 26, 2008

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