

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 645
Ways and Means

(Delegates Rosenberg and Luedtke)

Election Law - Change in Administrative Policy Affecting Voting Rights - Notice
and Judicial Review

This bill requires that specified public notice be provided if the State Board of Elections (SBE) or a local board of elections adopts a change in an administrative policy affecting voting rights. An adopted change in an administrative policy affecting voting rights that constitutes willful and knowing conduct that results or has the intent to result in the denial or abridgment of the right of any citizen of the United States to vote on account of race, color, or disability is subject to judicial review. Specified voting-related prohibitions and associated criminal penalties are made explicitly applicable to, in addition to any other person, a person acting under color of law.

The bill takes effect July 1, 2016, and applies only prospectively.

Fiscal Summary

State Effect: General fund expenditures may increase for additional resources in the Office of the Attorney General if the bill results in significant additional litigation. The extent of any increase cannot be reliably estimated.

Local Effect: Local government expenditures may increase due to legal costs if local boards of elections are involved in litigation as a result of the bill.

Small Business Effect: Minimal.

Analysis

Bill Summary: An “administrative policy affecting voting rights” is any action relating to voter registration, provisional voting, absentee voting, or the location of a polling place or early voting center.

If SBE or a local board of elections adopts a change in an administrative policy affecting voting rights, SBE and, if applicable, the local board that adopted the change must provide reasonable public notice of the change, within 48 hours of its adoption. The public notice must be in a reasonably convenient and accessible format and be prominently posted on SBE’s website and, if applicable, the local board of elections’ website. If SBE and, if applicable, the local board of elections that adopted the change, do not provide the public notice, the right to vote of an individual may not be denied or abridged because the individual fails to comply with the change.

A registered voter may seek judicial relief in the appropriate circuit court if SBE adopts a change in an administrative policy affecting voting rights that constitutes willfully and knowingly engaging in conduct that results or has the intent to result in the denial or abridgement of the right of any citizen of the United States to vote on account of race, color, or disability. In addition, the Attorney General may seek judicial relief in the appropriate circuit court if a local board of elections adopts such a change in an administrative policy affecting voting rights.

The bill establishes procedural requirements for a court proceeding under the bill.

Current Law:

SBE Adoption of Regulations

SBE is subject to requirements of the Administrative Procedure Act (APA) applicable to adoption of regulations, including requirements to publish proposed regulations in the Maryland Register and on its website, permit public comment, and publish notice of adoption in the Maryland Register. “Regulation” is defined under the APA as a statement or an amendment or repeal of a statement that (1) has general application; (2) has future effect; (3) is adopted by the unit to detail or carry out a law that the unit administers, govern organization of the unit, govern the procedure of the unit, or govern practice before the unit; and (4) is in any form, including a guideline, rule, standard, statement of interpretation, or statement of policy.

SBE Administrative Complaint Procedure

SBE regulations establish an administrative complaint procedure for certain types of complaints: (1) an alleged violation of any provision of Title III of the federal Help America Vote Act of 2002; (2) an alleged violation of any provision of the Election Law Article of the Annotated Code of Maryland relating to provisional ballots; and (3) a complaint brought by an individual who feels aggrieved by an action of a local board of elections regarding voter registration.

Judicial Review of Elections

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.”

State Fiscal Effect: General fund expenditures may increase to the extent any additional litigation resulting from the bill, that involves SBE, cannot be handled with existing resources of the Office of the Attorney General. The extent of any additional litigation cannot be reliably estimated.

Local Fiscal Effect: Local government expenditures increase to the extent the Attorney General seeks judicial review of a local board of elections change in administrative policy. While cases may be infrequent, legal costs incurred by a local board of elections for a case can be significant. The Montgomery County Board of Elections has incurred costs of between \$75,000 and \$140,000 for trials related to petitions in the past.

Additional Information

Prior Introductions: None.

Cross File: SB 1021 (Senator Pugh) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Elections; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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