

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1047
 Ways and Means

(Delegate Wilkins)

Education, Health, and Environmental Affairs

Mail-In Voting Enhancement Act

This bill establishes provisions governing (1) the availability, location, and other aspects of ballot drop boxes; (2) absentee ballot instructions; (3) voter access to absentee ballot application and absentee ballot status information; and (4) a voter’s ability to correct a problem with the voter’s absentee ballot. The bill also requires the State Board of Elections (SBE) to complete a specified report after each statewide election and requires a usability review of mail-in voting materials and forms. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$141,600 in FY 2022, with ongoing costs in future years. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	141,600	97,000	99,800	103,100	106,600
Net Effect	(\$141,600)	(\$97,000)	(\$99,800)	(\$103,100)	(\$106,600)

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

Local Effect: Local government expenditures increase, as discussed below. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Ballot Drop Boxes

Number, Availability, and Allocation

The bill requires SBE to make at least 300 ballot drop boxes available for each statewide primary and statewide general election and an appropriate number available for each special primary and special general election. SBE must ensure that ballot drop boxes are available during the period beginning at least 30 days before each election through Election Day, and a local board of elections must remove the ballots from each ballot drop box at least once each day that the ballot drop box is open. SBE must establish chain of custody procedures governing removal of election-related materials from ballot drop boxes and the return of the materials to the local board. The bill also requires that guidelines established by SBE for the administration of absentee voting by the local boards of elections provide for the return of absentee ballots using ballot drop boxes.

“Ballot drop box” means a secure, durable, weatherproof container that is officially designated by a local board of elections for voters to deposit completed absentee ballots in person. SBE must ensure that ballot drop boxes are compliant with the federal Americans with Disabilities Act and generally consistent in design and security features.

SBE must establish an equitable formula based on the number of registered voters in each county for the purpose of allocating ballot drop boxes among the counties. Each local board must reimburse SBE for 50% of the cost of the ballot drop boxes located in the county.

Location and Security

Each local board of elections must determine the location of each ballot drop box. A local board must take into account the following factors when determining the location of a ballot drop box:

- ensuring accessibility of the ballot drop box to historically disenfranchised communities, including voters with disabilities, cultural groups, ethnic groups, and minority groups;
- proximity of the ballot drop box to dense concentrations of voters;
- accessibility of the ballot drop box by public transportation;
- ensuring equitable distribution of ballot drop boxes throughout the county; and

- maximizing voter participation, including through placement of ballot drop boxes at community centers and public gathering places.

A local board must ensure the security of ballot drop boxes, including through (1) monitoring by security cameras at all times and (2) periodic in-person visits by appropriate personnel. A local board must have immediate access to a security camera used for monitoring a ballot drop box.

Canvassing, Electioneering, and Campaign Material

The bill prohibits a person from (1) canvassing, electioneering, or posting any campaign material in a manner that obstructs access to a ballot drop box or (2) placing any campaign material or any other unauthorized material on a ballot drop box. A person who violates these prohibitions is subject to a fine of up to \$1,000 and/or imprisonment for up to two years, under an existing penalty provision.

Other Prohibited Actions

The bill prohibits a person from (1) removing, defacing, damaging, destroying, or preventing the correct operation of a ballot drop box, or (2) except for servicing by an authorized person, unlocking any locked compartment of a ballot drop box unless instructed to do so by the election director of the local board for the county in which the ballot drop box is located. A person who violates these prohibitions is guilty of a felony and subject to a fine of up to \$10,000 and/or imprisonment for up to three years.

Absentee Ballot Instructions

The bill requires that the instructions that accompany an absentee ballot include a provision informing the voter that an absentee ballot placed in a mailbox after the last pick up on Election Day will not be postmarked on Election Day.

Voter Access to Absentee Ballot Application and Absentee Ballot Status Information

The bill requires that guidelines established by SBE for the administration of absentee voting by the local boards of elections provide for voter access to information concerning the status of the voter's absentee ballot. SBE must allow a voter to access information regarding (1) when the voter's absentee ballot application is received by the local board; (2) when the voter's absentee ballot is sent to the voter; (3) when the voter's completed absentee ballot is received by the local board; and (4) when the voter's absentee ballot is counted.

A voter may access the information concerning the voter's absentee ballot application and absentee ballot (1) through SBE's website; (2) by calling the toll-free telephone number of SBE; or (3) if the voter provides the voter's email address when applying for an absentee ballot online, by receiving an email message from SBE. SBE must provide updated information concerning a voter's absentee ballot within 72 hours.

Correction of a Problem with an Absentee Ballot

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 requires SBE to adopt regulations requiring a local board to (1) notify a voter of a problem with the voter's absentee ballot that would cause the ballot to be rejected but which is capable of being corrected by the voter and (2) provide the voter an opportunity to correct the problem and have the ballot counted.

The regulations must allow a voter to (1) supply a signature if the voter failed to sign the oath on the ballot envelope and (2) choose among multiple methods of communicating with the local board to correct a problem with the voter's absentee ballot, including text message, an accessible online portal, a mailed form, and an in-person visit to the local board office.

Post-election Report

The bill requires SBE to complete a comprehensive report after each statewide election, analyzing the election, including (1) voter turnout; (2) administrative policies and practices that were different from the previous election; (3) administrative policies and practices that were effective and those that were not effective; and (4) how SBE plans to improve the election process for future elections. SBE must post the report on its website and submit it to the General Assembly.

Usability Review of Mail-in Voting Materials and Forms

By August 1, 2021, SBE must contract with a usability consultant to review all the public informational materials and forms related to mail-in voting produced by SBE. By December 1, 2021, the consultant must make specified recommendations to SBE regarding ways the materials and forms could be made more usable, especially by socioeconomically diverse communities. By February 1, 2022, SBE must submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Committee on

Ways and Means that includes the recommendations submitted by the consultant and the actions SBE has taken or plans to take to implement the recommendations.

Current Law:

Absentee (Mail-in) Voting

An individual may vote by absentee (mail-in) ballot except to the extent preempted by federal law. An absentee ballot may be requested in writing (there are State and federal forms that can be used) or online through the SBE website. The voter may choose to receive the ballot by mail, by fax, through the Internet, or by hand at a local board of elections office. The voter may return the ballot by (1) mailing it, postmarked on or before Election Day or (2) delivering it in person to an early voting center or to the local board of elections or an Election Day polling place by the close of polls on Election Day. An absentee ballot must be accompanied by instructions, prescribed by SBE, for marking and returning the ballot.

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

Maintenance of Absentee Voting Records

Each local board of elections must maintain a full record of absentee voting in the county, including, for each absentee voter, (1) the date and time of the board's receipt of an application for an absentee ballot; (2) the action taken with regard to the application; (3) the appropriate ballot style; (4) the date of issuance of a ballot; (5) if mailed, the address to which the ballot is sent; (6) the date and time of the receipt of the voted absentee ballot; and (7) any other information specified by SBE.

Free Access System

SBE regulations require the board to establish a free access system that any voter who submits an absentee ballot application may access to determine whether the local board of elections received and accepted the voter's absentee ballot application and received and counted the voter's absentee ballot. Each local election director must use the statewide voter registration system to process all absentee ballot applications and returned ballots, and SBE must use the absentee voting information in the statewide voter registration system for the free access system. The free access system must be accessible online through SBE's website and by calling SBE's toll-free telephone number. An absentee voter must be required to provide the absentee voter's name and date of birth to access the information about the voter's ballot.

Prohibited Actions – Elections Equipment and Ballots

Title 16 of the Election Law Article (to which the bill's prohibitions regarding removing, defacing, damaging, destroying, preventing the correct operation of, or unauthorized unlocking of a ballot drop box are added) prohibits various actions relating to elections equipment and ballots, including:

- except for servicing by an authorized person, unlocking any locked compartment of a voting device unless instructed to do so by the election director;
- destroying or defacing a ballot, or delaying the delivery of a ballot;
- willfully concealing, damaging, or destroying voting equipment used or intended to be used on the day of the election, or removing voting equipment from the custody of the election judges or other election officials;
- willfully and knowingly tampering with, damaging, or attempting to damage any voting equipment that is used or will be used in an election, or preventing or attempting to prevent the correct operation of any voting equipment that is used or will be used on the day of the election;
- unless authorized, making or having in one's possession a key to any voting equipment that is used or will be used on the day of the election; and
- removing, defacing, or destroying equipment or supplies placed in a polling place by election officials during an election.

A person who violates the prohibitions relating to voting equipment or supplies is guilty of a felony and subject to a fine of up to \$10,000 and/or imprisonment for up to three years. A person who violates the prohibitions relating to ballots or unlocking a compartment of a voting device is guilty of a misdemeanor and subject to a fine of at least \$50 but not more than \$500 and/or imprisonment for up to 60 days.

State Fiscal Effect: General fund expenditures increase by \$141,604 in fiscal 2022, which accounts for a 30-day start-up delay. This estimate reflects the cost of (1) hiring an information technology (IT) programmer within SBE to assist in the development and maintenance of a system that will meet the bill's requirements for a voter's ability to correct a problem with the voter's mail-in ballot through text messaging and an accessible online portal (while the system is used by the local boards of elections to communicate with voters, this estimate assumes a centralized system is developed by SBE); (2) purchasing additional ballot drop boxes and delivering them to, and picking them up from, their locations during an election; and (3) the required usability review. The additional IT development and maintenance work is not expected to be able to be absorbed by existing SBE staff. The estimate includes a salary, fringe benefits, one-time start-up costs, an estimated cost of the usability review (based on the cost of a past review) and ongoing

expenses. The estimate of the costs for additional ballot drop boxes is based on the following assumptions:

- 8 additional ballot drop boxes are purchased to meet the bill’s requirement that SBE make at least 300 ballot drop boxes available for each statewide primary and statewide general election (SBE currently has 292 ballot drop boxes);
- the cost per ballot drop box is \$2,500 (SBE indicates that the cost can range from approximately \$1,500 to \$2,500, depending on the number of ballot drop boxes being ordered; a price closer to \$1,500 was paid for the larger number of ballot drop boxes purchased in 2020);
- the average total cost, per ballot drop box, for delivery and pick up of ballot drop boxes, to and from their location, is approximately \$1,500 (based on costs incurred for the 2020 general election); and
- the cost of the ballot drop boxes is shared 50/50 by SBE and the local boards of elections (required by the bill).

Position	1.0
Salaries and Fringe Benefits	\$94,989
Usability Review	25,000
Purchase of Ballot Drop Boxes	10,000
Ballot Drop Box Delivery and Pick Up	5,870
Other Operating Expenses	<u>5,745</u>
Total FY 2022 State Expenditures	\$141,604

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses, including delivery and pick up of ballot drop boxes.

Local Fiscal Effect:

Ballot Drop Boxes

Local government expenditures increase, collectively, by \$15,870 in fiscal 2022 and \$5,870 annually thereafter. This estimate reflects the local boards of elections’ share of the costs of purchasing additional ballot drop boxes (\$10,000) and delivering and picking up those additional ballot drop boxes, to and from their locations, for each statewide election (\$5,870), as described above.

Ballot Drop Box Management

Local boards of elections’ costs also increase to manage the eight additional ballot drop boxes purchased as a result of the bill (e.g., costs of emptying ballot drop boxes each day,

closing the ballot drop boxes on Election Day, and security). Carroll County, for example, indicates that its costs increase by \$1,000 each election if it would need to manage three additional ballot drop boxes. Information provided by Baltimore City indicates that its costs for ballot pick up from ballot drop boxes during the 2020 general election was \$347 per ballot drop box, and the city appears to have incurred significant costs for monitoring of the ballot drop boxes by law enforcement. For other legislation, Montgomery and Calvert counties provided estimated costs of \$5,800 and \$2,300, respectively, to purchase and install a security camera to monitor a ballot drop box.

It is unclear to what extent the bill increases costs related to use of the current inventory of 292 ballot drop boxes. If the full current inventory of ballot drop boxes is not otherwise used in future statewide elections, costs increase for local boards of elections to manage the additional ballot drop boxes that are used as a result of the bill's requirement that at least 300 ballot drop boxes be made available. Based on information provided by SBE, including information on policies that were in place for the management of ballot drop boxes during the 2020 general election, it appears that ballot drop boxes are likely to be managed in a manner consistent with a number of the bill's requirements even in the absence of the bill (*e.g.*, available at least 30 days prior to Election Day; ballots removed at least once each day). At least one potential exception, however, is that local boards of elections may incur additional costs to meet the bill's security requirements for ballot drop boxes, including purchasing and installing cameras the local board would have immediate access to (costs mentioned above), if security for any ballot drop boxes would not otherwise meet those requirements.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Baltimore City; Calvert, Carroll, Frederick, Harford, Montgomery, Prince George's, and St. Mary's counties; Department of Legislative Services

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