

**Department of Legislative Services**  
 Maryland General Assembly  
 2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 864 (Senator Kagan)  
 Education, Energy, and the Environment

**Election Reform Act of 2023**

This bill makes various changes to State law relating to election officials, election systems, circuit court judge elections, presidential electors, and absentee and provisional voting, as discussed below.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by at least \$56,500 in FY 2024 and by at least \$46,500 in FY 2026 and future years in which a primary election occurs, as discussed below. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	56,500	-	46,500	-	46,500
Net Effect	(\$56,500)	(-)	(\$46,500)	(-)	(\$46,500)

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

**Local Effect:** Local government expenditures are affected, beginning in FY 2024, as discussed below.

**Small Business Effect:** None.

**Analysis**

**Bill Summary:** The bill makes the following changes to State law:

- (1) *Prohibition against threatening an election director* – The bill prohibits knowingly and willfully making a threat to take the life of, kidnap, or cause physical injury to

a county election director, including knowingly sending, delivering, parting with, or making for the purpose of sending or delivering, such a threat. A person who violates the prohibition is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$2,500.

- (2) *Election service provider contracts* – The bill requires that contracts with providers of election systems (“election service providers”) require a provider to report on (1) any manufacturing of components of the election system that occurs outside the United States or (2) any material change to a component in any stage of manufacturing that occurs outside the United States at any time for the duration of the contract. The bill also authorizes the State Administrator of Elections to terminate a contract with an election service provider on a determination that a foreign national has the ability to control, influence, or direct the manufacturing of an election system in any manner that would compromise or influence, or give the appearance of compromising or influencing, the independence and integrity of an election.
- (3) *Nonpartisan circuit court judge elections* – The bill requires circuit court judges to be elected on a nonpartisan basis and establishes that any registered voter in a county, regardless of party affiliation or lack of party affiliation, is eligible to vote in the contests for circuit court judge nomination in a primary election. The candidates, equal in number to twice the number of offices to be filled, who receive the largest number of total votes cast in the primary election are nominated for the general election.
- (4) *Presidential electors* – The bill modifies provisions governing the nomination and election of presidential electors in the State and the casting of electors’ votes, primarily by (1) requiring electors to pledge to cast their votes for President and Vice President for the nominees/candidates of the party or unaffiliated presidential candidate which nominated them for elector and (2) establishing procedures for the appointment of substitute electors in the event of a vacancy in the office of elector and establishing that an elector vacates the office if the elector refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of their pledge.
- (5) *Validity of a ballot* – The bill establishes that a stray mark, blemish, or writing may not be the sole basis for invalidating a ballot if the express intent of a voter is clear; however, a local board may reject a ballot if it determines that a ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot. A stray mark or blemish includes a tear, a fold, a food spill, or an errant punctuation mark.

- (6) *Limitation on absentee ballots sent through the Internet* – The bill eliminates the ability of a voter to receive an absentee ballot by facsimile transmission and limits who may request to receive an absentee ballot through the Internet to (1) an absent uniformed services or overseas voter; (2) a voter with a disability who is unable to mark a ballot independently by hand; (3) a voter who is having a medical emergency or is hospitalized; (4) a voter who has an unforeseen and short-notice travel commitment; and (5) any other voter who would be unable to vote if they could not receive an absentee ballot electronically.
- (7) *Mailing of absentee ballots to voters* – The bill establishes that a contractor responsible for distributing absentee ballots to voters by mail must mail requested ballots in a timely manner but not later than 47 days before the applicable election day.
- (8) *Strategies to inform voters about casting absentee ballots by mail* – The bill requires the State Board of Elections (SBE), by January 31, 2024, to develop, implement, and report on strategies to inform voters about (1) casting absentee ballots by mail and how voting by mail is the most efficient absentee voting method and (2) the rare circumstances under which Internet absentee ballots may be requested.
- (9) *Analysis of data on reasons voters cast provisional ballots* – The bill requires SBE to, within 90 days after each primary election day and general election day in 2024 and 2026, submit a report that analyzes data from the electronic pollbooks on the reasons voters cast provisional ballots.

**Current Law:** Existing State law:

- prohibits a person from knowingly and willfully making a threat to take the life of, kidnap, or cause physical injury to a State official, a local elected official, a deputy State’s Attorney, an assistant State’s Attorney, or an assistant public defender, including knowingly sending, delivering, parting with, or making for the purpose of sending or delivering, such a threat (a person who violates the prohibition is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$2,500);
- requires that election service providers notify the State Administrator of Elections and/or SBE of (1) specified security violations or attempted security violations involving an election system and (2) ownership of, investment in, or control of the election service provider by a foreign national (with the State Administrator having authority to terminate a contract if such ownership, investment, or control compromises or influences, or gives the appearance of compromising or influencing, the independence and integrity of an election);

- allows for candidates for circuit court judge to be nominated for the general election by the Democratic and Republican parties in the primary election by “cross-filing,” appearing on both the Democratic and Republican primary election ballots, needing to win on only one;
- establishes a process for the nomination and election of presidential electors in the State, and the casting of electors’ votes, which includes (1) their election at the general election for President and Vice President of the United States, with their names not printed on the ballot, but a vote for the candidates for President and Vice President of a political party being counted as a vote for each of the presidential electors of the political party and (2) a subsequent meeting of the electors in the State House in accordance with the U.S. Constitution and federal law at which the electors cast their votes for the candidates for President and Vice President who received a plurality of the votes cast in the State;
- requires a local board of elections to reject an absentee or provisional ballot if the local board determines that the ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot;
- requires that a local board provide an absentee ballot to a voter by one of the following methods requested by the voter: (1) mail; (2) facsimile transmission; (3) the Internet; or (4) by hand during an in-person transaction; and
- requires a local board, once ballots are available, to provide an absentee ballot to a qualified applicant as soon as practicable after receipt of the request for the ballot (SBE is also subject to a federal requirement under the Uniformed and Overseas Citizens Absentee Voting Act to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter not later than 45 days before the election if the request is received by that time).

**State Fiscal Effect:** General fund expenditures increase by at least \$56,500 in fiscal 2024 and by at least \$46,500 in fiscal 2026 and future years in which a primary election occurs. This estimate reflects one-time programming costs to make changes to SBE’s election management system and the State’s share of ongoing costs for additional in-person paper ballots and mail-in ballots needed as a result of allowing any registered voter, regardless of party affiliation or lack of party affiliation, to vote in a primary election to nominate circuit court judges (provision three of the bill, as numbered above in the Bill Summary). This estimate assumes that, on average, at least 20% of the registered voters in the State who are not affiliated with the Democratic or Republican parties become eligible to vote in a given primary election as a result of the bill (accounting for the fact that circuit court

judge contests will not be on the ballot in every county in every primary election and that many unaffiliated and third-party voters are already eligible to vote in a primary election for nonpartisan board of education races).

In addition, general fund expenditures may increase as a result of the bill's provisions discussed below; however, those impacts have not been quantified. Remaining provisions of the bill are not expected to materially affect State finances.

- *Election service provider contracts* (provision 2) – The bill's requirement applicable to contracts with election service providers regarding reporting of manufacturing of components (or material changes to components in any stage of manufacturing) outside the United States may increase the cost of those contracts, to the extent the requirement limits the number of vendors that choose to bid on a contract. Reduced competition for contracts has been shown to generally result in higher procurement costs, although the effect on a single contract is more difficult to predict. The extent to which costs increase, if at all, cannot be reliably estimated.
- *Limitation on absentee ballots sent through the Internet* (provision 6) – General fund expenditures increase for each mail-in ballot that is no longer sent to a voter through the Internet as a result of the bill, reflecting a shift in costs from local board personnel costs associated with canvassing of mail-in ballots sent to voters through the Internet, to costs of instead mailing ballots to voters, a cost shared by SBE and the local boards. The extent to which expenditures increase, however, cannot be reliably estimated.
- *Strategies to inform voters about casting absentee ballots by mail* (provision 8) – SBE advises it may contract with a third-party consultant to comply with this requirement. However, the extent to which a consultant is needed, and an estimate of any associated costs, cannot be reliably determined at this time.

**Local Fiscal Effect:** The following provisions of the bill are expected to materially affect local government finances:

- *Nonpartisan circuit court judge elections* (provision 3) – Local government expenditures increase, collectively, by at least \$110,500 in fiscal 2024 and future years in which a primary election occurs. This estimate reflects the local boards' share of costs for additional in-person paper ballots and mail-in ballots, and the local boards' costs for additional specimen ballots, needed as a result of allowing any registered voter, regardless of party affiliation or lack of party affiliation, to vote in a primary election to nominate circuit court judges. As discussed above under the State Fiscal Effect, this estimate assumes that, on average, at least 20% of the

registered voters in the State who are not affiliated with the Democratic and Republican parties become eligible to vote in a given primary election as a result of the bill.

- *Limitation on absentee ballots sent through the Internet* (provision 6) – Local government expenditures are expected to decrease for each mail-in ballot that is no longer sent to a voter through the Internet as a result of the bill, reflecting a shift in costs from local board personnel costs associated with canvassing of mail-in ballots sent to voters through the Internet, to costs of instead mailing ballots to voters, a cost shared by SBE and the local boards. Local boards' share of the costs to mail the ballots to voters is expected to be less than its personnel costs to canvass mail-in ballots sent to voters through the Internet. The extent to which expenditures decrease, however, cannot be reliably estimated.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Baltimore City; Carroll County; Office of the Attorney General; Governor's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State Prosecutor's Office; Department of Public Safety and Correctional Services; Maryland State Board of Elections; Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2023  
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