

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 535

(Delegate Feldmark, *et al.*)

Ways and Means

Education, Energy, and the Environment

Election Law - Ballot Issuance, Processing, and Reporting Procedures and 2024
 Primary Date

This bill makes changes to State election law relating to (1) the issuance of absentee ballots; (2) the start of absentee ballot processing during an election; (3) the definition of “canvass”; (4) a voter’s ability to correct a failure to sign the oath on an absentee ballot envelope; (5) instances where a local board of elections receives more than one ballot from the same individual; and (6) reporting of election results by precinct. The bill also alters the date, in 2024, of the statewide primary election and the primary election for municipal offices in Baltimore City so that they are held on the second Tuesday in May, instead of the fourth Tuesday in April.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$84,100 in FY 2024, and by ongoing amounts in future years, 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	84,100	100,700	105,200	109,900	115,700
Net Effect	(\$84,100)	(\$100,700)	(\$105,200)	(\$109,900)	(\$115,700)

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

Local Effect: Local government expenditures increase, beginning in FY 2024, as discussed below. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Issuance of Absentee Ballots

The bill requires a local board of elections, not later than 43 days before an election, to send a ballot to each voter who qualifies to vote by absentee ballot and has made a request at least 60 days before the election to receive the ballot by mail, facsimile transmission, or the Internet. A local board must provide a ballot to a voter who qualifies to vote by absentee ballot and makes a request less than 60 days before an election (1) as soon as practicable after receipt of the request or (2) immediately for an in-person transaction with a voter or the voter's duly authorized agent.

Start of Absentee Ballot Processing

The bill replaces a provision that prohibits a local board of elections from opening any envelope of an absentee ballot prior to 8:00 a.m. on the Wednesday following Election Day with a provision that instead requires a local board to begin processing absentee ballots on the day that is eight business days before the first day of early voting. The State Administrator of Elections may grant a waiver from this requirement if a local board seeks a determination by the State Administrator that early canvassing is not (1) necessary due to the low number of absentee ballots received by the local board or (2) practicable due to limited resources or other constraints on the local board. The bill also authorizes a local board to conduct vote tallying (recording of votes cast by individual voters on a certified voting system) when absentee ballots are processed; however, a local board or an employee of a local board is prohibited from conducting absentee ballot vote tabulation (aggregation of votes to produce vote totals) before the polls open on Election Day. The bill also prohibits a local board from releasing absentee ballot vote totals before the polls close on Election Day. The bill clarifies that an existing requirement – that a local board prepare and release a report of the unofficial results/returns of the absentee vote tabulation at the end of each day of canvassing – applies after the polls close on Election Day.

Definition of “Canvass”

The bill modifies the definition of “canvass” by repealing a reference to the auditing of votes.

Failure to Sign the Oath on an Absentee Ballot Envelope

The bill replaces a requirement that a local board reject an absentee ballot if the voter failed to sign the oath on the ballot envelope with a requirement that the local board reject an

absentee ballot if the voter both failed to sign the oath on the ballot envelope or ballot/return envelope *and* failed to correct the omission before 10:00 a.m. on the day that is 10 days after Election Day. The bill requires a local board – promptly after receipt of an absentee ballot – to review the ballot envelope or ballot/return envelope for the omission of the voter’s signature on the oath. The bill also requires a local board to record the receipt of an absentee ballot in the statewide voter registration system and make the information available through the State Board of Elections’ (SBE) [free access system](#) as soon as practicable, but not later than two business days after receipt of an absentee ballot provided by mail or four business days after receipt of an absentee ballot provided through the Internet or by facsimile transmission.

SBE must adopt regulations requiring a local board to, as soon as practicable but not later than three business days after the date on which it was determined that a voter failed to sign the oath on the ballot envelope or ballot/return envelope, notify the voter of the failure and provide the voter an opportunity to correct the omission and have the ballot counted. The regulations must allow a voter to (1) supply a signature to the local board through a digital picture message sent by mobile telephone or email and (2) choose among multiple methods of communicating with the local board to correct the failure to sign the oath, including text message, email, an accessible online portal, a mailed form, and an in-person visit to the local board office.

Multiple Ballots Received from the Same Individual

The bill requires a local board of elections, if the local board receives more than one ballot from the same individual, to count the first ballot from the individual that is determined to be legally sufficient and reject any other ballot. Pursuant to an existing provision, however, the local board must reject an absentee ballot if the local board received more than one ballot from the same individual for the same election in the same ballot envelope.

Under provisions governing canvassing of absentee ballots, the bill repeals a provision that requires a local board of elections, if the local board receives more than one legally sufficient ballot, in separate envelopes, from the same individual, to count only the ballot with the latest properly signed oath and reject any other ballot. The bill also repeals a requirement that a local board reject a provisional ballot if the individual cast more than one ballot for the same election.

Election Results by Precinct

The bill requires that SBE’s reports of election results by precinct include the early, absentee, and provisional vote, and requires local boards of elections’ statements of election results to report the early, absentee, and provisional vote separately. The bill also repeals requirements that local boards of elections (1) report election results by precinct

and (2) publish a sufficient number of copies of the complete election results, tabulated by precinct, and make the copies available to the public at cost.

Date of the 2024 Primary Election

The bill alters the date, in 2024, of the statewide primary election and the primary election for municipal offices in Baltimore City so that they are held on the second Tuesday in May, instead of the fourth Tuesday in April.

Current Law:

Issuance of Absentee (Mail-in) Ballots

If an absentee (mail-in) ballot applicant qualifies to vote by absentee ballot, a local board must provide the ballot 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.

Once ballots are available, the local board must provide the ballot to a qualified applicant (1) as soon as practicable after receipt of the request or (2) immediately for an in-person transaction with a voter or the voter's duly authorized agent.

Absentee Ballot Processing/Canvassing

Following an election, each local board of elections must meet at its designated counting center to canvass absentee ballots cast in that election in accordance with the regulations and guidelines established by SBE. "Canvass" means the entire process of vote tallying, vote tabulation, and vote verification or audit, culminating in the production and certification of the official election results. For absentee ballots, the "canvass" includes the opening of any envelope accompanying an absentee ballot and the assembly and review of absentee ballots in preparation for vote tallying.

A local board of elections may not open any envelope of an absentee ballot prior to 8:00 a.m. on the Wednesday following Election Day.

SBE regulations require that local boards of elections start to canvass absentee ballots at 10:00 a.m. on the Thursday after the election and start the second absentee ballot canvass at 10:00 a.m. on the second Friday after an election.

"Canvass," Certification of Results, and Postelection Tabulation Audits

After each election, each board of canvassers (a local board of elections organized for the purpose of canvassing the vote) must transmit to the Governor, SBE, and the clerk of the

circuit court for the county certified copies of the election results in the county. The transmittal must be made on the second Friday after a primary or general election or, if the canvass is completed after that date, within 48 hours after the completion of the canvass. As mentioned above, “canvass” means the entire process of vote tallying, vote tabulation, and vote verification *or audit*, culminating in the production and certification of the official election results.

Chapter 523 of 2018 requires SBE to conduct an audit of the accuracy of the voting system’s tabulation of votes, following each statewide general election, by completing (1) an automated software audit of the electronic images of all ballots cast in the election and (2) a specified manual audit of voter-verifiable paper records. Following each statewide primary election, SBE (1) must complete an automated software audit of the electronic images of all ballots cast in the election and (2) may complete a manual audit of voter-verifiable paper records in a manner prescribed by SBE. The manual audit that must be completed following each statewide general election must be completed within 120 days after the general election, and Chapter 523 establishes that both the manual audits and automated software audits may not have any effect on the certified election results and must be used to improve the voting system and voting process for future elections.

Failure to Sign the Oath on an Absentee Ballot Envelope

A local board of elections may not reject an absentee ballot except by unanimous vote and in accordance with SBE regulations. A local board must reject an absentee ballot if the voter failed to sign the oath on the ballot envelope.

SBE regulations require an election director – if an absentee ballot is timely received but the voter did not sign the required oath – to (1) as soon as practicable, but not later than three business days after the election director determines that the voter failed to sign the oath, notify the voter that the voter did not sign the oath and (2) explain how the voter can provide a signed oath and when the signed oath must be received for the voter’s ballot to be accepted. The regulations authorize a voter to provide a signature by email, mail, in-person visit to the local board, or other means offered by SBE.

Multiple Ballots Received from the Same Individual

State law requires a local board of elections to reject a provisional ballot if the individual cast more than one ballot for the same election. Pursuant to SBE regulations, if an absentee ballot and provisional ballot are received from the same individual, the local board must reject the provisional ballot; however, if the local board receives an absentee ballot after a provisional ballot from the same voter has been counted the local board must reject the absentee ballot.

Under provisions governing canvassing of absentee ballots, State law requires a local board of elections – if the local board receives more than one legally sufficient ballot, in separate envelopes, from the same individual – to count only the ballot with the latest properly signed oath and reject any other ballot. The local board must reject an absentee ballot if the local board received more than one ballot from the same individual for the same election in the same ballot envelope. SBE regulations clarify that (1) if a single return absentee ballot envelope contains more than one ballot from the same individual for the same election, all ballots from that individual must be rejected and (2) if more than one ballot is received from the same individual in different envelopes, and the signed oaths all have the same dates or all have indecipherable dates, all ballots must be rejected.

Election Results by Precinct

State law requires local boards of elections and SBE to make election results available by precinct, but prohibits a statement prepared by a local board from reporting the absentee vote separately by precinct. Each local board must publish a sufficient number of copies of the complete election results, tabulated by precinct, and must make the copies available to the public at cost.

Date of the Primary Election

In the year in which the President of the United States is elected, the statewide primary election and the primary election for municipal offices in Baltimore City must be held on the fourth Tuesday in April.

State Fiscal Effect: General fund expenditures increase by at least \$84,091 in fiscal 2024, which accounts for the bill’s October 1, 2023, effective date. This estimate reflects the cost of 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 failure to sign the oath on the voter’s mail-in ballot envelope through text messaging and an accessible online portal. An additional cost, for the State’s share of contractual services (expected to be shared 50/50 by SBE and the local boards) that SBE anticipates also needing, to allow for a voter to supply a signature to a local board through a text message, cannot be quantified at this time. While the system is used by the local boards of elections to communicate with voters, this estimate assumes a centralized system is developed and/or procured by SBE. The estimate for the cost to hire the IT programmer includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$76,682
Operating Expenses	<u>7,409</u>
Total FY 2024 Minimum State Expenditures	\$84,091

Future year expenditures associated with the IT programmer position reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

General fund expenditures may further increase, by a relatively minimal amount, to pay for the State’s share of the cost of additional flash drives certain local board of elections expect to need for early canvassing, in order to process and scan mail-in ballots and store the recorded vote information without tabulating the mail-in vote totals before the polls open on Election Day. A smaller number of counties have also indicated a potential need for additional scanners, due to limited availability of scanners before or on Election Day, when scanners are dedicated to use in early voting centers and Election Day polling places. The statewide cost for additional flash drives, and a limited number of additional scanners if necessary, has not been quantified; however, based on information provided by a number of local boards, the increase in general fund expenditures to cover the State’s share (50%) of the cost for additional flash drives and any additional scanners is expected to be relatively minimal.

Local Fiscal Effect: Expenditures increase in certain counties to begin canvassing mail-in ballots eight business days before the first day of early voting, to the extent additional personnel costs for early canvassing are not fully offset by any savings in post-Election Day canvassing due to fewer mail-in ballots needing to be canvassed after Election Day. Of the counties that have provided estimates of additional staff costs to begin canvassing eight days before early voting, it appears that any net increase in expenditures, for most of them, is less than \$5,000.

As discussed above under the State Fiscal Effect, at least some local governments expect to also incur costs to acquire additional flash drives and potentially scanners; however, those costs (shared 50/50 with the State), on average, are expected to be relatively minimal for each local board.

Also, as discussed under the State Fiscal Effect, local board expenditures increase to cover 50% of the cost of contractual services SBE anticipates needing, to allow for a voter to supply a signature to a local board through a text message; however, those costs have not been quantified.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 163 and HB 862 of 2022.

Designated Cross File: SB 379 (Senator Kagan, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Baltimore City; Allegany, Anne Arundel, Calvert, Caroline, Carroll, Dorchester, Harford, St. Mary's, Talbot, and Wicomico counties; Maryland State Board of Elections; Department of Legislative Services

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