

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1331
Ways and Means

(Delegates A. Washington and Kaiser)

Election Law - Cybersecurity

This bill makes various changes to State election law relating to (1) notification of election systems security incidents; (2) requirements applicable to absentee voting; and (3) having paper copies of the election register available to election judges at polling places and early voting centers. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: The bill can be implemented with existing resources.

Local Effect: Local government expenditures increase beginning in FY 2019. The potential increase (from the counties contacted) ranges from \$4,000 in Wicomico County to \$46,000 in Baltimore City. Local revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Notification of Security Incidents

Notwithstanding any other law, the bill requires the State Administrator of Elections to provide specified notification if the State Administrator has reason to believe that a security incident has occurred involving an election system owned, operated, or maintained by the State Board of Elections (SBE) or a local board of elections, or an election system provided,

supported, or maintained by an election service provider. The State Administrator must provide the notification, within seven days after becoming aware of the security incident, to (1) SBE; (2) the Governor; (3) the President of the Senate and the Speaker of the House; (4) the Senate Education, Health, and Environmental Affairs Committee and the House Committee on Ways and Means; (5) the Department of Information Technology; and (6) the Office of Legislative Audits. The notification must contain specified information on the incident and actions taken in response to it and must be updated continuously as new information becomes available.

Notwithstanding any other law, the Secretary of Information Technology may require that the information contained in a notification be withheld from the general public if the Secretary determines that the public interest is served by withholding the information.

If an election service provider has reason to believe that a security incident has occurred involving an election system provided, supported, or maintained by the election service provider, the election service provider must (1) notify the State Administrator within seven days after becoming aware of the security incident and (2) cooperate with the State Administrator in providing the notification described above.

“Election service provider” is defined as any person providing, supporting, or maintaining an election system on behalf of SBE or a local board of elections, including a contractor or vendor.

“Election system” is defined as any information system used for the management, support, or administration of an election, including (1) the voting system; (2) the online voter registration system; (3) the voter registration database; (4) the online ballot request, delivery, or marking systems; (5) the electronic pollbooks; (6) the system for tabulating or reporting election results; and (7) the SBE or local board of elections email system.

“Security incident” is defined as an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system or (2) constitutes a violation or an imminent threat of a violation of law, security policies, security procedures, or acceptable use policies.

Requirements Relating to Absentee Ballots

The bill makes specified identification requirements, which are currently applicable to use of SBE’s online absentee ballot application, applicable to (1) use of the online absentee ballot application to request that an absentee ballot be sent by any method and (2) use of any method to request to receive a blank absentee ballot through the Internet. The bill also modifies the identification requirements to allow a voter with a disability, who does not

have a Maryland driver's license or Maryland identification card, to provide a Social Security number.

The SBE-approved absentee ballot application and the online absentee ballot application must require the applicant to check a box acknowledging a specified statement regarding the fact that an absentee ballot received by a voter online or by fax, and returned by mail, will be duplicated by election officials onto an official ballot that is machine readable (in order to be counted).

A voter who chooses to receive a blank absentee ballot through the Internet must be required to check a box, before choosing whether to mark the ballot by hand or use the online ballot marking tool, to acknowledge a specified statement regarding the possibility that the voter's choices could be viewed by others without the voter's knowledge if the voter chooses to mark the ballot on the voter's computer using the Internet.

Paper Copies of Election Register at Voting Locations

The bill requires that each polling place and early voting center have a paper copy of the election register available for the use of the election judges if computer devices containing a record of all registered voters in the county, that are required to be at each polling place, do not function properly during an election.

Current Law/Background:

Cybersecurity

Increased attention has been paid to security of election systems as a result of cybersecurity threats to election systems that occurred in 2016. Efforts are being made at various levels of government to increase existing security of election systems in order to guard against future threats. In Maryland, election officials continue to implement best practices for information systems and focus on securing and monitoring election systems. Scrutiny of the security of Maryland's election systems, by the Office of Legislative Audits (in an SBE audit [report](#) issued in April 2017) and others, has revealed certain deficiencies that can be (or already have been) addressed by administrative and/or legislative action. For additional information, see [Issue Papers, 2018 Legislative Session](#), Department of Legislative Services, pgs. 217-220 ("Cybersecurity of Election Systems") (November 2017).

Applying for an Absentee Ballot

A voter may request an absentee ballot by completing and submitting:

- the SBE-approved absentee ballot application;
- a form provided under federal law;

- a written request that includes (1) the voter’s name, residence address, and signature, and (2) the address to which the ballot is to be mailed, if different from the residence address; or
- the accessible online absentee ballot application provided by SBE.

SBE’s online absentee ballot application must require the applicant to provide (1) a Maryland driver’s license number or a Maryland identification card number, the last four digits of the applicant’s Social Security number, and other information identified by SBE that is not generally available to the public but is readily available to the applicant or (2) if the applicant is an absent uniformed services voter or overseas voter as defined under the federal Uniformed and Overseas Citizens Absentee Voting Act and does not have a Maryland driver’s license or Maryland identification card, a Social Security number.

Methods of Receiving and Marking an Absentee Ballot

Promptly after receipt of an absentee ballot application, an election director must review the application and determine whether the applicant qualifies to vote by absentee ballot. If the applicant qualifies to vote by absentee ballot, the local board of elections must provide the ballot to the 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.

SBE is authorized to provide an accessible optional online ballot marking tool for use by a voter who requested to have the absentee ballot sent by the Internet. “Online ballot marking tool” is defined to include a system that allows a voter to (1) access a blank ballot through the Internet; (2) electronically mark the ballot with the voter’s selections; and (3) print a paper copy of the marked ballot for mailing to a local board of elections. It does not include a system that is capable of storing, tabulating, or transmitting votes or voted ballots by electronic or electromagnetic means through the Internet.

Registered Voter Information at Polling Places

“Election register” is defined under State election law as the list of voters eligible to vote (1) in a precinct on Election Day or (2) in a county early voting center during early voting. Election judges are required to use the election register in checking in, establishing the identity of, and verifying the address of voters at a polling place or early voting center.

State law also requires that each polling place be equipped with a computer device that contains a record of all registered voters in the county that is capable of being networked to other polling place computer devices.

SBE’s current contingency plan policy requires a paper copy of the election register to be supplied to each polling place and a computer back-up election register to be supplied to

early voting centers (with the option for counties with only one early voting center to provide a paper copy of the election register to the early voting center instead).

Local Fiscal Effect: Local government expenditures increase annually, beginning in fiscal 2019, for local boards of elections to provide a paper copy of the election register to early voting centers. For example, Baltimore City expenditures increase by approximately \$46,000 for each election, to print and bind an election register (containing over 300,000 registered voters) for each of seven early voting centers. Wicomico County, which has fewer registered voters and one early voting center, expects costs of approximately \$4,000 for each election to print an election register for its early voting center.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Baltimore City; Harford, Montgomery, and Wicomico counties; Department of Legislative Services

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