

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1278
Ways and Means

(Delegate Kaiser, *et al.*)

Education, Health, and Environmental Affairs

Election Law - Postelection Tabulation Audit

This bill requires specified post-election software and manual audits to be conducted by the State Board of Elections (SBE) to audit the accuracy of the voting system's tabulation of votes. The audits may not have any effect on the certified election results but must be used to improve the voting system and voting process for future elections. **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: The bill does not materially affect State finances (assuming post-election software audits continue to be conducted in the absence of the bill).

Local Effect: Local government expenditures may increase in some counties. For example, Montgomery County (which has the largest number of registered voters) expects to incur costs of \$24,000 to conduct a manual audit after each general election, beginning in FY 2019.

Small Business Effect: None.

Analysis

Bill Summary:

Post-election Audit Requirements

The bill 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.

Manual Audit (Post-general Election) and Reporting

The manual audit of voter-verifiable paper records required to be conducted following each statewide general election must be of (1) at least 2% of precincts statewide, including at least one randomly chosen precinct in each county and additional precincts selected by SBE and (2) a number of votes equal to at least 1% of the statewide total in the previous comparable general election of early votes, of absentee votes, and of provisional votes, including at least a minimum number of early votes, absentee votes, and provisional votes in each county, as prescribed by SBE. “Previous comparable general election” is defined as (1) in a presidential election year, the presidential election held four years earlier and (2) in a gubernatorial election year, the gubernatorial election held four years earlier.

The manual audit must be completed within 120 days after the general election. If the manual audit shows a discrepancy, SBE is authorized to expand the manual audit and take any other actions it considers necessary to resolve the discrepancy.

Within 14 days after the conclusion of the audit, SBE must post a report on its website that describes (1) the precincts and number of votes selected for the manual audit in each county and the manner in which the precincts and votes were selected; (2) the results of the manual audit; and (3) any discrepancy shown by the manual audit and how the discrepancy was resolved. SBE must allow for public observation of each part of the manual audit process to the extent practicable.

SBE Regulations and the Effect of Audits Pursuant to the Bill

An audit pursuant to the bill 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.

SBE must adopt regulations to implement the bill.

Report on Resources Used to Complete 2018 General Election Audit

By May 1, 2019, SBE must submit a report that describes the resources required to complete the audit required under the bill following the 2018 general election, including time, personnel, and other costs, along with any other administrative obstacles to completing the audit.

Current Law/Background:

2016 General Election Post-election Audit and Planned 2018 Audits

The 2016 budget bill (Chapter 143) restricted \$50,000 of SBE's general fund appropriation for general administration in fiscal 2017 until the completion of a post-election tabulation audit following the 2016 general election, using the paper ballots or electronic images of the paper ballots, and the submission of a report on the audit to the budget committees; the Senate Education, Health, and Environmental Affairs Committee; and the House Ways and Means Committee by December 31, 2016.

The post-election audit of the 2016 general election was conducted using a software product that performed an independent, automated audit using ballot images imported from the voting system. SBE indicated in its December 2016 report to the legislative committees that the goal of the audit, to verify and confirm the accuracy of the voting system's reported results, was achieved.

Similar audits are planned for the 2018 elections, at a cost of \$352,000 per (primary or general) election, with the cost shared by SBE and the local boards of elections.

Current Law and Regulations on Post-election Verification of Vote Count

Under existing statute, within 10 days after any election and before certifying the results of the election, each board of canvassers (the local board of elections in a county when it has organized itself for the purpose of canvassing the vote after an election) must verify the vote count in accordance with regulations prescribed by SBE for the voting system used in the election. Upon completion of the verification process, the members of the board of canvassers must certify in writing that the election results are accurate and that the vote has been verified.

If a board of canvassers determines that there appears to be an error in the documents or records produced at a polling place following an election, it immediately must investigate the matter to ascertain whether the records or documents are correct.

SBE regulations establish a post-election verification and audit process conducted prior to certification of the election results which has the purpose of (1) demonstrating and confirming the accuracy of the voting system's tabulation logic; (2) confirming that the number of ballots cast equals the number of voters who checked in to vote at a polling place; and (3) ensuring that each accepted absentee and provisional ballot met the application and acceptance criteria and that rejected ballots did not meet the criteria. The verification of the voting system's tabulation logic involves comparing printed out vote totals from the individual voting units from a precinct with the aggregated results for the

precinct in the election management system. After 8 p.m. on Election Day, each local board of elections must randomly select at an open session of the board the greater of three precincts (with at least 300 registered voters) or 5% of all precincts used in the election, for post-election verification and auditing. The State Administrator of Elections may also require a local board of elections to conduct the audit and verification procedures on additional precincts.

Local Fiscal Effect: Local government expenditures may increase in some counties for costs of temporary staff to assist with the manual audit required by the bill. Montgomery County indicates that existing staff do not have sufficient available time in the months after an election to conduct the audit and estimates that it will incur approximately \$24,000 in temporary staff costs to conduct the audit after each general election, beginning in fiscal 2019. This estimate assumes that the manual audit is only conducted after general elections and not also after primary elections. Certain other counties contacted indicated the manual audit could be handled with existing staff. While the bill requires SBE to conduct the manual audit, the local boards of election are assumed to provide the majority of the personnel participating in the audit.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Baltimore, Charles, Frederick, and Montgomery counties; Department of Legislative Services

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