

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 494

(Senator Kagan)

Education, Energy, and the Environment

Ways and Means

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**Election Law - Postelection Procedures**

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This emergency bill makes changes to State election law regarding (1) the process of canvassing and certifying election results; (2) the appointment of designees to serve on the Board of State Canvassers; and (3) the ascertainment of results by the Governor.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:**

*Canvassing and Certification of Election Results*

*Error in Documents or Records*

The bill broadens a requirement that a local board of canvassers immediately investigate – if it determines that there appears to be an error in the documents or records produced at a polling place following an election – to ascertain whether the records or documents are correct. Under the bill, the local board of canvassers must investigate if it determines that there appears to be an error in any of the documents or records produced during the election (not limited to those produced at a polling place) and the investigation must be conducted

in consultation with the State Administrator of Elections. Under current law and under the bill, the board of canvassers may correct a document or record only in accordance with State Board of Elections (SBE) regulations.

#### *Dissent Related to Local Certification of Election Results*

The bill modifies existing provisions governing the verification of the vote count and certification of election results by each board of canvassers. The bill adds a requirement that, if a member of a board of canvassers files a specified written statement of dissent (described below under Current Law) with the local board of elections, the State Administrator must review the dissent and submit it to the Board of State Canvassers for a final determination. In place of an existing requirement that SBE maintain a file of the written statements, the bill requires SBE to maintain a file of the final determination.

#### *State Certification of Election Results*

The bill alters provisions governing the preparation and transmittal (to SBE) of certified election results by the Board of State Canvassers, so that the board must convene and prepare and transmit certified election results to SBE after each election unless the election is a special primary election that included a candidate for member of Congress (for which election results are prepared and certified by SBE, instead of the board). (Under current law, the board must convene only after a presidential primary election, a State general election, or a general or special general election that includes a candidate for member of Congress.)

The bill also reduces the time within which the board must convene after an election from 35 days to 30 days.

The bill also authorizes the Board of State Canvassers, as well as SBE when it is certifying election results following a special primary election to fill a vacancy in the office of Representative in Congress, to reject a statement by a local board of canvassers that the Board of State Canvassers (or SBE) determines, based on clear and convincing evidence, is inaccurate, and ascertain the accurate election results. The board (or SBE) must prepare a distinct written statement of the reasons for the determination, including the evidence on which the determination was based, to be transmitted to or filed with (and maintained by) SBE.

The State Administrator must transmit the certified election results to the Governor within three days after receipt. SBE may adopt regulations governing the certification of election results.

### *Appointment of Designees to Serve on the Board of State Canvassers*

The bill also authorizes the remaining members of the Board of State Canvassers – other than the State Treasurer who is currently authorized to appoint a deputy treasurer as designee – to appoint designees to serve in their stead as follows:

- the Secretary of State may appoint a Deputy Secretary of State;
- the Comptroller may appoint the Chief Deputy Comptroller;
- the Clerk of the Supreme Court of Maryland may appoint the Chief Deputy; and
- the Attorney General may appoint the Deputy Attorney General.

The bill also modifies the authorization for the State Treasurer to appoint a designee so that the State Treasurer is authorized to appoint *the* deputy treasurer rather than *a* deputy treasurer. Members of the Board of State Canvassers must submit a designation of a designee to the State Administrator at least seven days before the Board of State Canvassers convenes.

### *Ascertainment of Results by the Governor*

The bill requires the Governor – when ascertaining and enumerating the number of votes cast for candidates in an election, for the purpose of declaring presidential electors or congressional candidates to be elected – to ascertain and enumerate the number of votes cast for each candidate consistent with the returns of the election received by the Governor in accordance with provisions requiring SBE to certify, deliver, and publish election results. After ascertaining and enumerating the number of votes for candidates, in addition to signing and issuing a proclamation, the Governor must issue and transmit a certificate of electors under 3 U.S.C. § 5. The bill also modifies a requirement that the proclamation be published in newspapers so that the proclamation instead must be posted on SBE’s website.

### **Current Law:**

#### *Canvassing and Certification of Election Results*

##### *Error in Documents or Records*

If a local board of canvassers (a local board of elections after it organizes itself for the purpose of canvassing) determines that there appears to be an error in the documents or records produced at the polling place following an election, it immediately must investigate the matter to ascertain whether the records or documents are correct. The board of canvassers may correct a document or record only in accordance with SBE regulations.

### *Dissent Related to Local Certification of Election Results*

Within 10 days after any election, and before certifying the results of the election, each local board of canvassers 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 (1) certify in writing that the election results are accurate and that the vote has been verified and (2) provide copies of the election results to the Governor, SBE, and the clerk of the circuit court for the appropriate county.

If a member of a board of canvassers dissents from a determination of an election result or reasonably believes that the conduct of a local board of elections member or local board proceeding was not in compliance with applicable law or regulation or was otherwise illegal or irregular, the member must prepare and file with the local board a distinct written statement of the reasons for the dissent or concern. SBE must maintain a file of the written statements submitted by members of the local boards.

### *Canvassing of Certain Primary Election Results by the State Board of Elections*

Following each gubernatorial primary or special primary election to fill a vacancy in the office of Representative in Congress, SBE must:

- convene within two days after the certified official election results are received from the local boards;
- if a majority of the members of SBE is not present, adjourn for not more than one day;
- determine which candidates, by the greatest number of votes, have been nominated to each office and which questions have received a sufficient number of votes to be adopted or approved; and
- prepare and certify statewide election results based on the certified copies of the statements made by the boards of canvassers.

If a member of SBE dissents from a determination of an election result or reasonably believes that the conduct of a member of SBE or the conduct of an SBE proceeding was not in compliance with applicable law or regulation or was otherwise illegal or irregular, the member must prepare and file with SBE a distinct written statement of the reasons for the dissent or concern. SBE must maintain a file of the written statements submitted by members of SBE.

## *Canvassing of Election Results by the Board of State Canvassers*

The Board of State Canvassers must:

- (1) convene only after a presidential primary election, a State general election, or a general or special general election that includes a candidate for member of the Congress of the United States; (2) convene within 35 days of that election; and (3) if a majority of members of the board is not present, adjourn for not more than one day;
- determine which candidates, by the greatest number of votes, have been elected to each office and which questions have received a sufficient number of votes to be adopted or approved;
- prepare statewide election results for each candidate and question, based on the certified copies of the statements made by the local boards of canvassers; and
- prepare and transmit a certified statement of the election results to SBE.

If a member of the Board of State Canvassers dissents from a determination of an election result or reasonably believes that the conduct of a board member or board proceeding was not in compliance with applicable law or regulation or was otherwise illegal or irregular, the member must prepare and transmit a distinct written statement of the reasons for the dissent or concern to SBE. SBE must maintain a file of the written statements submitted by members of the Board of State Canvassers.

### *Board of State Canvassers Membership*

The Board of State Canvassers consists of:

- the Secretary of State;
- the Comptroller;
- the State Treasurer;
- the Clerk of the Supreme Court of Maryland; and
- the Attorney General.

The State Treasurer may appoint, as the Treasurer's designee, a deputy treasurer to serve on the Board of State Canvassers.

## *Ascertainment of Results by the Governor*

### *State Law*

The Governor must, on receipt of the returns of an election for electors to choose a President and Vice President of the United States or of an election to choose a member of Congress, (1) ascertain and enumerate the number of votes cast for each candidate for President and Vice President of the United States and declare elected the presidential electors of the candidates who receive the highest number of votes and (2) in each contest, ascertain and enumerate the number of votes cast for each candidate voted for as a member of Congress and declare elected the candidate who receives the highest number of votes.

After ascertaining and enumerating the number of votes for candidates, the Governor must sign and issue a proclamation declaring the name of each candidate who is elected and cause the proclamation to be published in newspapers.

### *Federal Law*

Under 3 U.S.C. § 5, as amended by the Electoral Count Reform Act of 2022 (ECRA), not later than six days before the time fixed for the meeting of presidential electors, the executive of each state must issue a certificate of ascertainment of appointment of electors, pursuant to applicable laws of the state enacted prior to election day. The executive of each state must transmit the certificate to the Archivist of the United States immediately after its issuance and by the most expeditious method available.

Under 3 U.S.C. § 7, as amended by ECRA, the electors must meet and give their votes on the first Tuesday after the second Wednesday in December following their appointment.

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## **Additional Information**

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

**Designated Cross File:** HB 471 (Delegates Fair and Pruski) - Ways and Means.

**Information Source(s):** Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Maryland State Board of Elections; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2024  
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