

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

Senate Bill 713 (Senator Hollinger, *et al.*)
 Education, Health, and Environmental Affairs

Election Law - Voting Systems - Voter-Verified Paper Records

This bill requires that a voting system selected and certified by the State Board of Elections (SBE) produce a voter-verified paper record and provide access to disabled individuals equivalent to that provided to individuals who are not disabled. The bill also mandates other election procedures including certification of the software and hardware used in the voting system tabulation process prior to each election, posting of results at each polling place and on the Internet, a random audit of results, and a public demonstration of the voting system in each county prior to each election.

The bill takes effect June 1, 2006.

Fiscal Summary

State Effect: General fund expenditures could increase by as much as \$55 million in FY 2007, excluding costs for audits, pre-election certifications, and Internet postings. Out-year expenditures reflect election-year costs for ballot printing, handling, and storage.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	55,000,000	1,550,000	1,550,000	0	3,100,000
Net Effect	(\$55,000,000)	(\$1,550,000)	(\$1,550,000)	\$0	(\$3,100,000)

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

Local Effect: None. Uncodified bill language requires the Governor to allocate the resources necessary to implement this bill.

Small Business Effect: None.

Analysis

Bill Summary:

Voter-verified Paper Record

A voter-verified paper record may include a paper printout from a touch-screen or other electronic voting machine, an optical scan ballot, a paper ballot mailed (whether from a domestic or overseas location) to a local board, or a ballot created through the use of a ballot marking device. The paper record must: (1) be an individual document physically separated from any other similar document and not a continuous roll; (2) be sufficiently durable to withstand handling during audits and recounts; and (3) use ink that will not fade, smear, or otherwise degrade and obscure the paper record over time.

The voter-verified paper record must be available for inspection and verification by the voter before his/her vote is cast and the voter must be able to correct any error made by the voting system.

In the event of any irregularity or inconsistency between an electronic record and a voter-verified paper record, the paper record is considered the official true and correct record of votes cast. The voter-verified paper record shall also be preserved and maintained in a manner that makes it impossible to associate a voter with the record of their vote and must be securely stored by a local board for at least one year after an election.

Access for Individuals with Disabilities

A voting system approved by SBE must have the ability for a voter to cast and verify their votes by both visual and nonvisual means. At least one voting system in each polling place must provide access to disabled individuals and afford the voter the opportunity for private and independent review, acceptance, or rejection of the ballot as they intend to cast it. SBE must adopt regulations to ensure that these voting systems provide equivalent access to disabled individuals as is provided to individuals without disabilities.

Voting System/Posting of Results/Random Audit

The voting system's aggregation and tabulation equipment must only receive data by disk, tape, or other physical means and the software and hardware used in the voting system aggregation and tabulation process must be certified at least 30 days prior to its deployment in each election. Accuracy of results must take precedence over the speed with which results are posted in aggregating and tabulating the results.

After the polls close, election judges must post, in an area accessible to the public, a paper record of the total of all the votes cast at that polling place. In addition, prior to the required random audit, each local board and SBE must make the initial election results available on a publicly accessible Internet web site. The paper records posted at each polling place must be retained in a secure location for one year after the date of the election and be made available for public review.

A hand-counted, random audit must be conducted after each election. The audit must compare the electronic records with the corresponding voter-verified paper records for a select percentage of ballots cast in no less than 5% of the polling places in each county. The polling places to be audited must be determined by a random drawing open to the public and press. If a discrepancy is found between the electronic and hand-counted vote tallies, an expanded audit must be conducted at the polling place at which the discrepancy was found and, at SBE's discretion, the entire county may be audited. Once the extent of any inconsistencies or irregularities is determined, SBE must conduct a further investigation of the voting system as it deems necessary to certify the election results in accordance with State law. SBE shall order a partial or complete recount if the audit results call into question the outcome of the election for any federal, State, or local candidate or question.

Recordkeeping

SBE must at all times maintain information regarding voting system failures occurring during pre-election testing and certification procedures, an election, post-election audits, recounts, or other results certification procedures, or at any other time. SBE must keep a permanent record of this information and make it available to the public on its web site within 48 hours of each failure, whether it is discovered by SBE or another person charged with certifying or decertifying election results or a voting system.

Public Demonstration of Voting System

Between 30 and 10 days before the date of an election each local board must conduct a public demonstration of the voting system including the vote aggregation and tabulation equipment to be used in the election. The demonstration must be publicly announced and notice must be posted on the SBE web site no later than seven days before the demonstration.

Funding and Applicability

The Governor must allocate the resources required to implement the requirements of the bill, including any gift received by the State for the purposes of the bill and any federal or other special funds or grant received by the State for the purposes of the bill, except for federal funds received by the State to implement the requirements of the Help America

Vote Act of 2002 (HAVA). The requirements of the bill apply to each election occurring on or after the effective date of the bill.

Current Law:

Voting System Requirements

HAVA requires, in part, that all voting systems beginning January 1, 2006 must (1) permit voters to verify their selections on a ballot, notify voters of overvotes and the effect of casting multiple votes, and permit voters to change their votes and correct any errors before casting a ballot; and (2) be capable of producing a permanent paper record for the voting system that can be manually audited and is available as an official record for recounts. HAVA does not specifically require that a paper record be produced at the polling place for each voter to verify.

Similar to HAVA, State law also requires that a voting system be capable of producing a paper record of all votes cast for use in a recount, but does not require that the paper records be verified by the voters. State law also requires that a voting system protect the secrecy of the ballot, protect the security of the voting process, count and record all votes accurately, accommodate any ballot used under the Election Law Article, and protect all other rights of voters and candidates. A voting system must be shown to meet federal standards through independent testing, prior to undergoing the State certification process.

SBE is required to take a number of considerations into account when certifying a voting system including the commercial availability of the system, the cost of implementing the system, the efficiency of the system, the system's ease of understanding for the voter, and accessibility for all voters with disabilities recognized by the Americans with Disabilities Act. SBE has set further minimum requirements for voting systems along with certification procedures by regulation.

Access for Disabled Individuals and Alternative Language Access

Under HAVA, one voting system at each polling place must be accessible for individuals with disabilities including offering nonvisual access for the blind and visually impaired. Alternative language accessibility is also required under HAVA in accordance with § 203 of the federal Voting Rights Act of 1965. Pursuant to § 203, States and political subdivisions that have over a certain amount of limited English proficient citizens in a single language minority group (defined as persons who are American Indian, Asian American, Alaska Native, or of Spanish heritage) may not provide voting materials only in the English language. A state or political subdivision is subject to the requirement where the number of voting age U. S. citizens of limited English proficiency in a single language minority group within the jurisdiction:

- is more than 10,000;
- is more than 5% of all voting age citizens;
- on an Indian reservation, exceeds 5% of American Indian or Alaska Native residents of voting age on the reservation; and
- the illiteracy rate of the group is higher than the national illiteracy rate.

Pre- and Post-election Activities

Pre- and post-election procedures followed by local boards and election judges are set forth by statute and SBE regulations. Pursuant to SBE regulations, each voting unit goes through a pre-election test to ensure its accuracy in tabulating votes and each local board is required to conduct a public demonstration of the test and make the test results available for inspection. A post-election system verification is also performed either manually or with election management software by retabulating voting results in the greater of two precincts or 10% of all precincts in each county. In addition, a post-election audit is conducted by the election director of each county according to procedures developed by the local board and approved by SBE.

Background: In accordance with Chapter 564 of 2001, which required SBE to select, certify, and acquire a uniform statewide voting system both for polling places and absentee voting, SBE contracted with Diebold Election Systems in January 2002 to purchase the direct-recording electronic (DRE) voting system for use in polling places. To date, SBE has committed to over \$90 million in hardware and support services. All local jurisdictions with the exception of Baltimore City implemented this voting system for the March 2004 presidential primary election, and all jurisdictions including Baltimore City will use the voting system for the 2006 election. The acquisition of the current voting system was financed through the State Treasurer's Office and SBE is committed to payments for the system through 2014 as well as payment for support services to Diebold through 2008.

The Accuvote-TS DRE voting system Maryland uses is not capable of producing voter-verified paper records. The voting system stores election results on removable memory cards that are transported to local boards of election for vote tabulation and can later produce a permanent paper record of all ballots cast, but the system cannot produce a paper record at the time the ballot is cast.

Diebold has developed a prototype of a printer add-on to be used with the Accuvote-TS, yet SBE is uncertain whether the printer add-on could be effectively used with Maryland's current voting system. In addition, SBE advises that the time needed for manufacturing and State certification, in addition to implementation and deployment by SBE and local boards, would likely make the option of a printer add-on unfeasible to provide voter-verified paper records for the 2006 statewide elections.

SBE advises that the most feasible method of meeting the requirements of this bill would be switching to an optical scan voting system, since DRE voting systems that are designed with printers generally use a continuous roll of paper to record votes, which this bill does not allow. The bill requires each voter-verified paper record be an individual document that is physically separated from any other similar document and not a continuous roll. An optical scan voting system would satisfy this requirement in that it uses individual paper ballots.

SBE advises that using optical scan machines may require the State to also invest in an Automark voting system which is designed to work in conjunction with optical scan systems to provide access to voters with disabilities. The Automark is a relatively new product and SBE is unsure whether it meets federal voting system guidelines.

In addition, it may not be possible to implement a new voting system in time for the 2006 elections given the amount of preparation that goes into an election and the significant effect a change in the voting system would have on the process. SBE advises that it is a near impossibility. At the very least, doing so would present a significant challenge for SBE and local boards.

Current Access for the Disabled and Alternative Language Access

The State's uniform statewide voting system currently accommodates voters with disabilities by offering an audio ballot, a magnified ballot for voters with low vision, and an adjustable screen to accommodate voters who prefer or need to vote while sitting.

Alternative language access is available in two counties. Montgomery County offers all election materials, including audio ballots, in Spanish, in accordance with the requirements of the federal Voting Rights Act, and also voluntarily provides printed election material in Korean, Vietnamese, and Mandarin Chinese. Prince George's County voluntarily provides election material, including audio ballots, in Spanish. State law allows voters to have someone assist them in voting (though not the voter's employer or agent of the employer or an officer or agent of the voter's union), including an election judge, provided it is done in the presence of another election judge of a different political party.

State Expenditures: Assuming that a new voting system could be implemented in time for the 2006 elections, general fund expenditures would increase by \$55 million in fiscal 2007. The State would bear the entire cost of implementing the bill's provisions, unless the State receives federal or special funds or grants.

SBE estimates the cost of purchasing optical scan machines would be roughly \$16.5 million (\$5,750 per machine for 1,939 machines – one per precinct – and \$250 per voting booth for 20,000 booths). Purchasing Automark machines in addition to the optical scan machines would cost roughly \$26 million for 4,000 units at \$6,500 per unit. Software costs for each of these systems could be roughly \$1.3 million.

Expenditure increases would occur with respect to security review, software installation and interface development (between Automark and optical scan systems), contractual personnel, documentation updates, voter education, training, and ballot printing. These costs could total more than \$10 million, according to rough estimates by SBE.

Assuming the optical scan and Automark voting systems would be purchased outright, State general fund expenditures could increase by as much as \$55 million in fiscal 2007. Continuing out-year expenditures for the most part would not be affected, aside from increases that would occur from ballot printing costs in election years (estimated by SBE as a roughly \$1.5 million increase per election, \$3 million for both primary and general elections) as well as costs associated with the handling and storage of ballots.

The costs associated with posting election results and other information on the Internet and conducting pre-election certifications and post-election random audits at no less than 5% of the precincts in each county cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: HB 244 (Delegate Hixson, *et al.*) – Ways and Means.

Information Source(s): Montgomery County, Prince George's County, Caroline County, Calvert County, Howard County, State Board of Elections, Baltimore City, Department of Legislative Services

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