

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 8 (Delegate Montgomery)
 Ways and Means

Election Law - Voting Systems - Verification and Accessibility

This bill requires a voting system that does not use a document ballot to produce an accessible voter-verified paper audit trail (VVPAT) of each vote cast that must be made available for inspection and verification by the voter at the time the vote is cast. Access must also be provided to blind or visually impaired individuals and persons with limited English proficiency in precincts where a limited English proficient population makes up 3% of the overall population of the geographic area served by the precinct. The Governor must allocate the resources required to implement the requirements of the bill, except that federal funds previously committed to implement the Help America Vote Act of 2002 (HAVA) may not be used. The voting system requirements are effective for each election occurring after June 1, 2006.

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. If the newer Diebold system is purchased, out-year expenditure increases of more than \$1 million could occur in election years due to the costs of handling and storage of the voter-verified paper records. If an optical scan system is purchased, out-year expenditure increases of more than \$3 million would occur in election years due to ballot printing and storage costs.

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

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: The bill requires the voter verifiable system to allow a voter to correct any error made by the voting system before the paper record is preserved at the polling place. The accessible voter-verified paper audit trail would be the official record of the election and would be used in the event of a recount. The bill also requires the State Board of Elections (SBE) to conduct a random sampling of 2% of the total number of voting precincts in each legislative district that produce an accessible voter-verifiable paper audit trail to compare the paper record against the electronically recorded results.

Each polling place in the State must have at least one voting unit accessible to the blind and visually impaired. Also, each polling place in a precinct where any limited English proficient population constitutes 3% of the overall population within the geographic region served by that precinct must contain at least one voting unit that provides access in the language spoken by that population. Voting units made accessible to blind or visually impaired and limited English proficient individuals must have the ability for a voter to cast and verify their votes by both visual and nonvisual means.

SBE must adopt regulations that provide these individuals with access equivalent to that provided to individuals who are not blind or visually impaired or are English proficient.

“Access” means the ability to receive, use, select and manipulate data, and operate controls included in voting systems.

“Nonvisual” means synthesized speech.

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 vote 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. In addition, a voting system must 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 in 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; or
- is more than 5% of all voting age citizens; or
- 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.

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 for

absentee voting, SBE contracted with Diebold Election Systems in January 2002 to purchase the direct-recording electronic (DRE) voting system to be used in polling places and to date 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 a voter-verified paper audit trail. 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 time would be needed at the very least for manufacturing and State certification, in addition to implementation and deployment by SBE and local boards, which likely would make the option of a printer add-on unfeasible to provide a VVPAT for the 2006 statewide elections.

Diebold offers a more recent version of the Accuvote-TS that is capable of producing a VVPAT on a continuous roll. There are also various optical scan systems that produce a VVPAT since a vote is cast on a paper ballot that is fed into an optical scan machine. SBE advises that the newer Accuvote machine is a more reliable option than adding a printer to the current voting systems, yet has concerns about the possible lack of secrecy of votes on a continuous roll, as well as the efficiency and accuracy of an audit or recount using a continuous roll of paper records. Using optical scan machines, on the other hand, may require the State to also invest in an Automark voting system which is designed to work in conjunction with an optical scan system 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.

Aside from those issues, 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 Fiscal Effect: Assuming that a new voting system could be implemented in time for the 2006 elections, doing so could result in an increase in general fund expenditures of \$55 million for either system. The State would bear the entire cost of implementing the bill's provisions.

SBE estimates the cost of purchasing newer Diebold systems would be roughly \$61.5 million, based on 20,000 machines being required at \$3,075 per machine. However, SBE advises it will be able to obtain a credit from Diebold for the State's current machines of \$18 million, reducing the total cost to \$43.5 million. In the alternative, 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. Therefore, the hardware and software costs for both the newer Diebold systems and the optical scan systems coupled with Automark systems would be roughly \$45 million.

Expenditure increases would occur with respect to security review, software installation and interface development (for optical scan and Automark systems) contractual personnel, documentation updates, voter education, training, warehousing and delivery costs (Diebold machines), ballot printing (optical scan systems), and ballot or VVPAT storage. These costs could total more than \$10 million, according to rough estimates by SBE. SBE was unable to estimate the cost per election to conduct the random sampling in 2% of precincts required by the bill, however, an estimate of \$40,000 per election was

provided in the fiscal note for HB 107 of 2005, an almost identical bill that had the same requirement.

Assuming the new voting system would be purchased out-right, State general fund expenditures could increase in fiscal 2007 by as much as \$55 million. Out-year expenditure increases 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) for optical scan systems, as well as costs associated with the handling and storage of voter-verified paper records or optical scan ballots (possibly costing more than \$1 million per election year for voter-verified paper records).

Additional Information

Prior Introductions: HB 107 was introduced in 2005 and heard by the House Ways and Means Committee, yet no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - January 31, 2006
mll/jr Revised - Clarification - February 8, 2006

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510