

**Department of Legislative Services**  
 Maryland General Assembly  
 2006 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 49 (Delegate Montgomery)  
 Ways and Means

**Election Law - Optical Scan Voting System Required**

This bill requires that the voting system selected and certified by the State Board of Elections (SBE) for use in all counties for voting in polling places and for absentee voting be chosen from a list of five optical scan voting systems.

The bill will take effect June 1, 2006.

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by as much as \$27.5 million in FY 2007. Out-year increases reflect election-year costs, shared with the counties and the City of Baltimore, for printing, handling, and storage of ballots.

| (in dollars)   | FY 2007        | FY 2008     | FY 2009     | FY 2010 | FY 2011       |
|----------------|----------------|-------------|-------------|---------|---------------|
| Revenues       | \$0            | \$0         | \$0         | \$0     | \$0           |
| GF Expenditure | 27,500,000     | 775,000     | 775,000     | 0       | 1,550,000     |
| Net Effect     | (\$27,500,000) | (\$775,000) | (\$775,000) | \$0     | (\$1,550,000) |

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

**Local Effect:** Expenditures would increase for counties and the City of Baltimore according to their share, based on voting age population, of half the cost of acquiring and operating the new voting system, which could be as much as \$27.5 million in FY 2007. Each county and the City of Baltimore would bear their share of out-year operating cost increases for the optical scan systems.

**Small Business Effect:** None.

## Analysis

### Current Law:

#### *Voting Systems*

State law requires SBE to select and certify a voting system for use in polling places and a voting system for absentee ballots, for use in all counties. SBE may not certify a voting system unless it determines that it will 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, protect all other rights of voters and candidates, and be capable of producing a paper record of all votes cast for use in a recount.

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.

State voting systems are also subject to the requirements of the federal Help America Vote Act of 2002 (HAVA). Under HAVA, 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.

#### *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.

### *Funding*

Chapter 564 of 2001, which required SBE to select, certify, and acquire a uniform statewide voting system for both polling places and absentee voting, provides, in uncodified language, that each county must pay its share, based on its voting age population, of one-half of the State's cost of acquiring and operating the uniform statewide voting systems. Operating costs include the cost of maintenance, storage, printing of ballots, technical support and programming, related supplies and materials, and software licensing fees.

Under codified State law, in existence prior to the enactment of Chapter 564 of 2001, counties are required to appropriate funds for the local boards' overall operational expenses and expenses for supplies and equipment necessary for voter registration and elections.

**Background:** In accordance with Chapter 564 of 2001, SBE contracted with Diebold Election Systems in January 2002 to purchase a touchscreen, 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 for the DRE system. All local jurisdictions with the exception of Baltimore City used the voting systems for the March 2004 presidential primary election, and all jurisdictions including Baltimore City will use the system for the 2006 elections. 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.

Before the State's purchase of touchscreen voting technology, most jurisdictions in the State used optical scan machines. A DRE machine allows voters to make selections on a touchscreen while optical scan machines require the voter to fill in bubbles or arrows on a paper ballot, then feed the ballot into a scanner that will tell them if their ballot has been filled out properly. DREs and optical scan machines both record votes electronically and have removable memory. The ballots for optical scan machines serve as the paper trail in the event of a recount and the memory cards on DRE machines are capable of producing paper records of all ballots cast.

SBE advises that using optical scan machines may require the State to also invest in Automark voting systems which are 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 voting systems 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.

**State Expenditures:** Assuming that a new voting system could be implemented in time for the 2006 elections, State and local expenditures would increase by \$55 million in fiscal 2007. It is assumed that the uncodified language of Chapter 564 of 2001 directing that the State and counties split the acquisition and operating costs of the uniform statewide voting systems would apply.

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 that all of the above-mentioned costs would be shared by the county and Baltimore City governments and that the optical scan and Automark voting systems would be purchased outright, State general fund expenditures could increase by as much as \$27.5 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, split between the counties and the State) as well as costs associated with the handling and storage of ballots.

**Local Expenditures:** According to Chapter 564 of 2001, counties must pay their share of one-half of the State's cost of acquiring and operating the uniform statewide voting systems, determined by their voting age population. Counties and Baltimore City would

therefore experience expenditure increases equal to their share of \$27.5 million in fiscal 2007, and would be responsible for their share of out-year expenditure increases mentioned above.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Board of Elections, Department of Legislative Services

**Fiscal Note History:** First Reader - January 31, 2006  
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Analysis by: Scott D. Kennedy

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