

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 893
 Ways and Means

(Delegate Hixson, *et al.*)

Education, Health, and Environmental Affairs

Election Law - Voting Systems - Requirements

This emergency bill establishes specified alternative standards applicable to the selection and certification of a voting system if, at the time of procurement of a voting system, there is not a commercially available voting system that satisfies all existing requirements. Among the alternative standards, under such circumstances a voting system is not required to comply with the accessibility standards of the Voluntary Voting System Guidelines (VVSG) under the Help America Vote Act (HAVA) and voting units accessible to voters with disabilities are not required to provide a voter-verifiable paper record. The bill, however, requires machines that provide a voter-verifiable paper record and meet specified requirements, including the accessibility standards of VVSG, to be certified and deployed within two years of having been determined to meet the requirements.

Fiscal Summary

State Effect: General fund expenditures may decrease by approximately \$478,500 in FY 2010 in the event the State’s existing voting machines are used to provide access to voters with disabilities. Future year expenditures reflect reduced capital lease-purchase payments extending through FY 2015. These reductions, however, may be offset or eliminated, to the extent accessible voting machines must be acquired, certified, and deployed in the future pursuant to the bill.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	(478,500)	(1,195,200)	(1,194,000)	(1,192,700)	(1,191,500)
Net Effect	\$478,500	\$1,195,200	\$1,194,000	\$1,192,700	\$1,191,500

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

Local Effect: Local government expenditures may decrease by approximately \$478,500 in FY 2010. Decreases in expenditures in FY 2010 and future years may be offset by local board of elections costs to administer elections with two voting systems and any purchase of accessible voting machines in the future pursuant to the bill.

Small Business Effect: None.

Analysis

Bill Summary: The following standards apply if, at the time of procurement of a voting system, there is not a commercially available voting system that satisfies all existing requirements applicable to the selection and certification of a voting system:

- a voting system selected and certified must have been examined by an independent testing laboratory that is approved by either the U.S. Election Assistance Commission (EAC) or the National Association of State Election Directors (NASSED);
- a voting system selected and certified is not required to comply with the accessibility standards of VVSG;
- the State Board of Elections (SBE) must provide at least one voting machine in each polling place on election day that is accessible to voters with disabilities and available for use by all voters; and
- such a voting machine accessible to voters with disabilities and available for use by all voters is not required to provide a voter-verifiable paper record.

With the exception of these alternative standards, all other existing requirements applicable to the selection and certification of a voting system apply.

SBE must certify and deploy a voting machine that provides a voter-verifiable paper record within two years after a determination that (1) the voting machine has been examined by an independent testing laboratory approved by EAC and shown by the laboratory to meet specified requirements, including the accessibility standards of VVSG; (2) the voting machine is compatible with the voting system selected and certified for voting in polling places in the State; and (3) the voting machine meets other State certification requirements.

The bill specifies that State law requirements enacted under Chapters 547 and 548 of 2007, including the requirement that a voting system provide a voter-verifiable paper record in order to be certified by SBE, apply to each election governed by State law beginning with the 2010 gubernatorial primary election.

Current Law: In order for a voting system to be certified by SBE, the board must determine that, among other things, the voting system will provide a specified voter-verifiable paper record and has been examined by an independent testing laboratory approved by EAC and shown by the laboratory to meet the performance and test standards for electronic voting systems established by the Federal Election Commission (FEC) or EAC.

A voting system selected, certified, and implemented must also meet specified requirements relating to the accessibility of the system to voters with disabilities, including that the system must comply with both the Americans with Disabilities Act and HAVA, including accessibility standards adopted as part of VVSG pursuant to HAVA. Before the selection of a voting system, SBE must ensure that the system conforms to the access requirements of VVSG in effect at the time of selection.

Background: Chapters 547 and 548 of 2007, enacted following continued scrutiny in Maryland and nationwide of the security and accuracy of direct-recording electronic (DRE) touchscreen voting machines, established the requirements mentioned above under Current Law. The law is applicable to each election occurring on or after January 1, 2010.

EAC, created under HAVA, adopted VVSG in 2005, which became effective December 2007, and administers a voting system testing and certification program in which independent laboratories are accredited by EAC to test voting systems to determine compliance with VVSG. To date, only one voting system has been certified by EAC to VVSG. That voting system, however, does not provide a voter-verifiable paper record as required under the voting system certification requirements of Chapters 547 and 548. It is unclear if, or when, a voting system that will meet the requirements of Chapters 547 and 548 may be certified by EAC to VVSG.

Prior to HAVA, and the adoption of VVSG, voting systems were assessed and qualified by NASED (a nonpartisan association consisting of election directors nationwide) against 1990 and 2002 voting system standards developed by FEC, utilizing independent testing laboratories. SBE indicates that, with the exception of the one voting system certified under VVSG, currently all of the completed examinations of voting systems were conducted by laboratories that were approved by NASED.

The fiscal 2010 State budget includes approximately \$5.8 million for one capital lease payment and contractual services for a new voting system. This amount represents \$2.9 million in State general funds and \$2.9 million in special funds from local election reform payments. The budget, however, also contains a contingent reduction of \$2 million in State general funds. The reduction is contingent on the enactment of the Budget Reconciliation and Financing Act of 2009 (SB 166/HB 101) authorizing the use

of the Fair Campaign Financing Fund to support the purchase of a new optical scan voting system. The budget authorizes a budget amendment to be processed to replace the \$2 million in general funds with special funds. The Fair Campaign Financing Fund exists to provide public campaign financing for qualifying gubernatorial candidates but has not been utilized in recent years.

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 for polling places and absentee voting. Operating costs include the cost of maintenance, storage, printing of ballots, technical support and programming, related supplies and materials, and software licensing fees.

State Fiscal Effect: General fund expenditures may decrease by approximately \$478,500 in fiscal 2010 in the event the State's existing DRE touchscreen voting machines are used to provide access to voters with disabilities. This reflects the State's share of potential foregone costs of purchasing ballot marking devices for use by voters with disabilities. This potential reduction (\$541,000) is offset in fiscal 2010 by an assumed one-time contractual services cost of \$62,500 associated with developing an interface at the State level to manage two different voting systems and allow for the reporting of one set of merged results. This assumes that an optical scan system procured by SBE is provided by a vendor other than the State's current vendor for the DRE touchscreen machines. SBE indicates the contractual services cost to develop an interface may not be incurred if the State's current vendor is selected to also provide an optical scan system.

The estimate does not account for any associated effect on voting system services costs of using the existing voting machines instead of procuring ballot marking devices.

The estimate assumes:

- a voting system meeting the current requirements of Chapters 547 and 548 of 2007 could otherwise be procured, utilizing funding in the proposed fiscal 2010 State budget. As mentioned previously, however, it is unclear if, or when, a voting system that will meet the requirements of Chapters 547 and 548 will be available;
- 2,000 ballot marking devices would otherwise be procured at a per unit cost of \$5,600; and

- the ballot marking devices would otherwise have been paid for under a capital lease, at an assumed interest rate of 1.9%, with payments extending through fiscal 2015.

The Department of Legislative Services advises that a significant portion of the potential reduced costs associated with this bill may be incurred in later fiscal years. This is due to the fact that only one capital lease payment for a new voting system is expected to be made in fiscal 2010, whereas two payments are expected to be made in future years, through fiscal 2014 (with one remaining lease payment in fiscal 2015). Annual out-year expenditure reductions, through 2014, may average \$1.2 million. These out-year reductions, however, may be offset or eliminated, to the extent voting machines that provide a voter-verifiable paper record and meet federal accessibility requirements must be acquired, certified, and deployed in future years pursuant to the bill.

SBE estimates the development of an interface between the current DRE voting system and an optical scan system can be created at a cost of \$125,000, assuming 10 weeks of analysis, design, and testing by SBE's current election management system vendor. It is assumed, for the purposes of this fiscal and policy note, that the costs of interfacing the two systems would be considered a voting system cost and be shared with the counties.

SBE estimates that services costs associated with the current DRE voting systems, if a portion of them are retained for use by voters with disabilities, could be over \$300,000 per year (including ballot design assistance, audio ballot development, software license maintenance, continued hardware warranty, election management server software license, and as needed technical staff resources). It is unclear, however, how these services might compare with services associated with newly procured ballot marking devices, and is therefore not included in the estimate.

Local Fiscal Effect: Local government expenditures may collectively decrease by approximately \$478,500 in fiscal 2010. This reflects the local share of potential foregone costs of purchasing ballot marking devices and an estimate of State costs, assumed to be shared with the counties, associated with developing an interface between the two different voting systems at the State level. A significant portion of the potential reduced costs associated with not purchasing ballot marking devices may be incurred in later fiscal years. Annual out-year expenditure reductions, through 2014, may average \$1.2 million. Any effect on voting system services costs of retaining the existing voting machines instead of procuring ballot marking devices is unclear at this time.

The reduction in expenditures for local boards of elections due to foregone costs of purchasing ballot marking devices may be offset by costs for local boards to administer elections using two voting systems as discussed below (additional election judges, potential integration costs). Further, as stated under State Fiscal Effect, the reduction in

expenditures may also be offset or eliminated in future years to the extent voting machines that provide a voter-verifiable paper record and meet federal accessibility requirements must be acquired, certified, and deployed in the future pursuant to the bill.

Additional Election Judges

SBE indicates that some local boards may need to hire designated election judges to be assigned to the DRE voting units and Montgomery, Howard, Frederick, and Anne Arundel counties and Baltimore City indicate that at least one additional election judge in each polling place likely will be needed as a result of the bill. Montgomery County indicates that using the existing voting systems to provide access for voters with disabilities would create three separate methods of voting in a polling place for election judges to implement and manage (the DRE touchscreen machines for voters with disabilities, the optical scan system, and provisional voting) and that closing the polls will be more complicated.

For illustrative purposes, Frederick County would incur just over \$18,000 in additional costs to pay election judges for training and election day work for a gubernatorial primary and general election, and to supply materials for the election judges. Baltimore City would incur additional costs of at least \$105,000 for compensation of election judges for training and election day work, and for the costs of conducting the training, for a gubernatorial primary and general election.

Conducting elections with two separate voting systems may affect other aspects of election administration for local boards, such as training of local board personnel and voting system preparation prior to elections, but any additional effect on local board expenditures is uncertain at this time.

Potential Interfacing Costs

Similar to SBE, local boards of elections may incur costs associated with interfacing two voting systems to allow for reporting of consolidated results at the local level. Whether additional costs will be incurred will likely depend, at least in part, on the outcome of SBE's procurement of a new voting system and whether the State would be administering elections with two voting systems from two separate vendors. It is uncertain how this issue would be addressed and the extent of any interfacing costs that might be incurred by local boards cannot be reliably determined at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections, Baltimore City, Anne Arundel County, Frederick County, Howard County, Montgomery County, Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2009
mlm/hlb Revised - House Third Reader - April 6, 2009
Revised - Enrolled Bill - May 19, 2009

Analysis by: Scott D. Kennedy

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