

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 665
Ways and Means

(Delegate Hixson, *et al.*)

Election Law - Audit of Election Results - Transparency in Election
Administration

This bill (1) requires a specified audit of the vote count to be conducted in certain statewide and congressional representative contests before the results of an election are certified; (2) contains requirements relating to public access to information concerning the administration of elections and public participation in State and local boards of elections meetings; and (3) makes changes to rules applicable to challengers and watchers.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund expenditures may increase due to potential information technology (IT) and personnel costs, or, alternatively, contractual services costs, associated with the bill's requirements.

Local Effect: Local government expenditures increase due to the cost of conducting manual recounts and potential IT and equipment-related costs. Costs will vary by election and jurisdiction.

Small Business Effect: None.

Analysis

Bill Summary:

Audit of Specified Election Contests

A specified audit must be conducted in each statewide contest and each congressional representative contest in which more than one candidate's name appeared on the ballot or one candidate's name appeared on the ballot and the number of valid write-in votes is equal to or greater than 10% of the total number of votes cast in the contest. The audit includes a comparison of a manual count of voter-verified paper ballots with the machine count, and the manual count is considered the official and accurate record of votes cast, in the event of a discrepancy between the two counts.

The precincts to be manually counted are selected by means of specified random draws, the number of which are performed is determined by the margin of difference (between the apparent winning candidate and the apparent losing candidate with the highest number of votes) in each audited contest, in accordance with specified tables set forth in the bill. Pursuant to the specified tables, the margin of difference is inversely proportional to the number of random draws required to be performed per audited statewide contest, with a margin of difference of less than or equal to 0.10% automatically requiring a manual count of all precincts.

A "random draw" is defined as a random selection of one precinct from among all the precincts where a contest appeared on the ballot, using a publicly observed method of producing random numbers, such as rolls of fair dice. The likelihood that a precinct will be chosen in a random draw must be proportional to the number of active registered votes in the precinct 60 days before the election. A precinct selected in more than one random draw is manually counted only once.

Additional provisions regarding the timing of the audit, manual counting of additional precincts in the event of specified variations between the manual count and the machine count, and the ability of specified candidates to request that up to three additional precincts be manually counted are included in the bill.

SBE must develop or revise specified written procedures governing the audits prior to each election, solicit public comments, and revise the procedures as necessary in response to the public comments. The bill contains additional requirements related to public access to the audit process and related information, including precinct-level machine count vote totals and final audit results.

SBE, in consultation with the local boards, must post a report on its web site within three months of the completion of an audit explaining any voting system or election process deficiencies identified by the audit and specific actions that will be taken to address the deficiencies.

All documents, reports, and results of an audit must be permanently maintained and posted on the web sites of the State and local boards and be available in hard copy for public inspection. The documents, reports, and results of an audit may be used as prima facie evidence of an irregularity in an election contest.

Public Access/Participation

The bill requires SBE to adopt specified regulations that provide for convenient and timely public access to information concerning the administration of elections. The information must be posted on the State and local board web sites and available for public inspection at the State and local board offices.

The bill also contains specified requirements regarding public access to State and local board meetings and related information, and public participation in the meetings.

Challengers/Watchers

The bill includes a local, State, national, or international poll monitoring organization among those organizations having the right to designate a registered voter as a challenger or watcher and specifies that a nonaccredited challenger or watcher must have all the rights of an accredited challenger or watcher.

Current Law: SBE is required to make available to the general public, in a timely and efficient manner, information on the electoral process, including a publication that includes relevant State law and portions of the Maryland Constitution and information gathered and maintained regarding elections.

State law allows for challengers and watchers who are registered voters and designated by SBE; a local board; a candidate; a political party; or any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot to be present at a polling place. A person's right to vote may only be challenged on the basis of his/her identity.

Challengers and watchers may enter a polling place a half hour before polls open and remain in the polling place until the polls are closed and election judges leave the polling place. Challengers and watchers generally may not interact with voters in the polling place or handle any original election documents.

An election judge may permit an individual who is not an accredited challenger or watcher to enter the polling place to challenge a voter, after which the individual must leave the polling place. A majority of election judges may limit the number of nonaccredited challengers and watchers allowed in the polling place at any one time and all restrictions on the actions of an accredited challenger or watcher apply to a nonaccredited challenger or watcher.

State regulations specify a verification process for the State's current voting system, to be conducted after each election, to verify the vote-counting capabilities of the system. The verification is conducted by the local boards in not less than the greater of two precincts or 10% of all precincts.

Background: SBE was awarded a grant from the Pew Charitable Trusts, as part of its Make Voting Work initiative, to research and develop "a comprehensive election audit based on professional auditing principles, detailed statistical analysis, and election administration expertise." The project was completed in November and SBE has begun implementing the auditing procedures.

State Fiscal Effect: General fund expenditures may increase to comply with the requirements of the bill; however, any increase cannot be reliably estimated at this time. SBE indicates it cannot reliably determine the fiscal impact associated with the bill, but that IT and personnel costs, or alternatively, contractual services costs, associated with the bill's requirement that materials and audio recordings be posted on its web site, may be incurred.

Assuming local boards will primarily be responsible for carrying out the manual count required by the bill, any State costs associated with the manual count presumably will not be significant. However, SBE indicates that the timeline between the 2010 gubernatorial primary and general election, for certification of primary election results and preparation of general election ballots, is barely attainable with existing statutory deadlines and procedural tasks. As a result, the requirement of the manual count during that period may have an operational impact on SBE.

Local Fiscal Effect: SBE indicates the approximate cost of recounts, which would be comparable to the manual counting required under the bill, varies from approximately \$0.20 to \$0.35 per ballot. In the 2008 general election, this would have translated to between \$28,120 and \$49,209 in costs for local boards. This estimate is based on the mean number of voters per precinct in the 2008 general election of 1,314, and does not account for the possibility of precincts being drawn more than once in the random draws, which would limit the number of precincts in which manual counts were conducted.

Costs may potentially be higher for a given county. Howard County, for example, indicates that personnel costs for a manual count in one precinct will total \$11,520. Estimates provided by Montgomery County and Baltimore City of the cost of a manual count of all precincts in the jurisdiction averaged to \$1,057 and \$3,897 per precinct, respectively.

Costs will vary by election and jurisdiction. In the 2008 general election, for example, a significant majority of the manual counting would have occurred in Congressional District 01, where there was a 0.79% margin of difference.

Counties may also incur costs similar to those identified by SBE, resulting from the requirement that specified information and audio recordings be posted on local board web sites. SBE indicates that several local boards do not have web sites at all and many have web sites hosted and maintained by the county IT division. According to SBE, as a result, county IT divisions may be significantly impacted, or local boards will be required to create a webmaster position and procure web site development software and servers to support the bill's requirements. Counties may also incur costs for an amplified sound system, if necessary, and audio recording equipment.

Additional Information

Prior Introductions: None.

Cross File: SB 595 (Senator Kasemeyer) - Education, Health, and Environmental Affairs.

Information Source(s): Calvert, Howard, and Montgomery counties; Baltimore City; State Board of Elections; Department of Legislative Services

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