

Department of Legislative Services  
 Maryland General Assembly  
 2009 Session

FISCAL AND POLICY NOTE

House Bill 738 (Delegate Cardin)  
 Ways and Means

Elections - Voting System Requirements and Accommodations for Voters with Disabilities

This emergency bill allows for certification, by the State Board of Elections (SBE), of a voting system that has been examined by an independent testing laboratory approved by the National Association of State Election Directors (NASSED) and shown by the laboratory to meet specified federal performance and test standards for electronic voting systems. In addition, SBE may certify and use a voting system that does not have a voter-verifiable paper record for the purpose of providing access to voters with disabilities. The bill also alters specified standards for accessibility for voters with disabilities.

Fiscal Summary

**State Effect:** General fund expenditures may decrease by approximately \$489,000 in FY 2010 in the event the State’s existing voting machines are used to provide access to voters with disabilities. This does not account for any associated effect on voting system services costs. Future year expenditures reflect a reduced capital lease agreement extending through FY 2015.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	(489,000)	(1,191,700)	(1,190,500)	(1,189,300)	(1,188,100)
Net Effect	\$489,000	\$1,191,700	\$1,190,500	\$1,189,300	\$1,188,100

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

**Local Effect:** Local government expenditures may decrease by \$489,000 in FY 2010. This does not account for any effect on voting system services costs or local board election administration costs.

**Small Business Effect:** None.

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## **Analysis**

**Current Law:** SBE, in consultation with the local boards, must select and certify a voting system for voting in polling places and a voting system for absentee voting. Each voting system must be used in all counties.

In order for a voting system to be certified by SBE, the board must determine that the voting system has been examined by an independent testing laboratory approved by the U.S. Election Assistance Commission (EAC) and shown 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 meet specified requirements relating to the accessibility of the system to voters with disabilities, including that the system must comply with accessibility standards adopted as part of the Voluntary Voting System Guidelines (VVSG) pursuant to the federal Help America Vote Act of 2002 (HAVA). Before the selection of a voting system, SBE must ensure that the system conforms to the access requirements of the VVSG.

**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, provide in part that SBE may not certify a voting system unless it determines the voting system will provide a “voter-verifiable paper record.” Chapters 547 and 548 included the above-mentioned requirement that a voting system must comply with accessibility standards adopted as part of VVSG pursuant to HAVA. 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 proposed 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. SBE issued a request for proposal in January 2009 for procurement of optical scan machines and ballot marking devices (devices similar to DRE machines that mark an optical scan ballot according to choices made by the voter).

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.

The estimated total cost of the voting system is just under \$39 million, expected to extend from fiscal 2009 through 2015, which includes capital lease payments and contractual services. Actual costs may vary depending on the contract awarded.

**State Fiscal Effect:** General fund expenditures may decrease by approximately \$489,000 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 (\$551,500) is offset in fiscal 2010 by an estimated one-time contractual services cost of \$62,500 associated with developing an interface to manage two different voting systems and allow for the reporting of one set of merged results. 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 Chapter 547 and 548 of 2007 could otherwise be procured, utilizing funding in the proposed fiscal 2010 State budget. As mentioned above, however, it is unclear if, or when, a voting system that will meet the requirements of Chapter 547 and 548 will be available;

- 2,000 ballot marking devices would otherwise be procured at a per unit cost of \$5,600 (costs may vary depending on the contract awarded); 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 will 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 \$1,189,900.

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 this cost would be considered a voting system cost and be split between the State and 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 \$489,000 in fiscal 2010. This reflects the counties' share of potential foregone costs of purchasing ballot marking devices and an estimate of costs associated with developing an interface between the two different voting systems. The estimate does not account for any associated effect on voting system services costs of retaining the existing voting machines instead of procuring ballot marking devices.

A significant portion of the potential reduced costs associated with this bill will be incurred in later fiscal years. Annual out-year expenditure reductions, through 2014, may average \$1,189,900.

SBE indicates that some local boards may need to hire designated election judges to be assigned to the DRE voting units. Montgomery County, for example, indicates it may incur increased expenditures of \$355,500 over the course of two elections primarily due to the cost of hiring additional election judges. 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. It is unclear, however, how these effects compare with any effects on polling place staff or otherwise of using ballot marking devices, and therefore are not accounted for in the above estimate.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Kent County, Montgomery County, Washington County, Worcester County, Baltimore City, State Board of Elections, Department of Disabilities, Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2009  
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