

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 421 (Senator Colburn)
Education, Health, and Environmental Affairs

Election Law - Delay in Replacement of Voting Systems

This emergency bill delays the implementation of a new voting system that provides a voter-verifiable paper record, required by Chapters 547 and 548 of 2007 (as amended by Chapter 428 of 2009), until the later of January 1, 2016, or the date of the final payment for the State's current direct-recording electronic (DRE) touchscreen voting system. Under current law, certification standards require that a voting system provide a voter-verifiable paper record for each election beginning with the 2010 gubernatorial primary election.

Fiscal Summary

State Effect: General fund expenditures are expected to decrease significantly beginning in FY 2012 due to the delay in implementation of a new voting system. The delayed expenditures will begin to be incurred in FY 2015. The State Board of Elections (SBE) has estimated the additional costs to procure a new voting system at approximately \$18.7 million over the course of the first three years of implementation, the State share of which totals \$9.4 million. It is assumed the decrease in general fund expenditures over the course of FY 2012 through 2014 will be comparable to that estimate.

Local Effect: Local government expenditures are expected to decrease significantly beginning in FY 2012. The delayed expenditures will begin to be incurred in FY 2015. The local share of the estimated additional costs for a new voting system over the first three years of implementation is approximately \$9.4 million. It is assumed the decrease in local government expenditures over the course of FY 2012 through 2014 will be comparable to that estimate.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Chapters 547 and 548 of 2007 specify that SBE may not certify a voting system unless it determines the voting system will provide a specified “voter-verifiable paper record.” Chapters 547 and 548 also established requirements relating to accessibility for voters with disabilities including that a voting system provide access to voters with disabilities equivalent to access provided to voters without disabilities, without creating a segregated ballot.

In early 2009, SBE released a request for proposals (RFP) to procure a new voting system; however, it was believed there would not be a commercially available system to procure that would meet certain requirements of Chapters 547 and 548 relating to (1) the approving authority of the testing laboratory that would examine a voting system with respect to its conformance to specified federal standards; and (2) conformance with certain federal standards relating to accessibility for voters with disabilities. Chapter 428 of 2009 amended those requirements, in part allowing the State’s current touchscreen voting machines to be used for the time being to provide access for voters with disabilities, despite not providing a voter-verifiable paper record.

SBE subsequently cancelled the initial RFP and issued two new RFPs to procure a new voting system and related support services. While SBE intended to take the procurements to the Board of Public Works (BPW) in early calendar 2010, no funding is included in the Governor’s proposed fiscal 2011 budget for the new voting system or support services. The procurement of the support services is expected to appear before BPW in February 2010, but the status of the procurement for the new voting system is unclear.

State Fiscal Effect: Assuming funding will not be included in the fiscal 2011 State budget for a new voting system (as is currently the case in the Governor’s proposed fiscal 2011 budget), the bill is not expected to affect State finances in fiscal 2011. Beyond fiscal 2011, general fund expenditures for a new voting system will be delayed until fiscal 2015, assuming procurement and implementation of a voting system prior to the 2016 statewide elections. Payments for the State’s existing voting system are scheduled to end in fiscal 2014 and therefore it is assumed that, under the bill, a new voting system that provides a voter-verifiable paper record will be required for each statewide election occurring on or after January 1, 2016.

SBE has estimated the *additional* costs (over the costs of continuing use of the existing voting systems) to procure a new voting system at approximately \$18.7 million over the course of the first three years of implementation (not accounting for the entire cost of financed hardware paid for beyond the first three years). The estimate includes hardware costs, increased paper ballot costs, supplies, vendor support, voter outreach, and other implementation costs. SBE’s estimate accounts for costs over the course of fiscal 2010 through 2012, in the event funding is provided in those fiscal years. It is assumed costs

over the course of fiscal 2012 through 2014 would be comparable. Pursuant to Chapter 564 of 2001, which requires the counties to pay one-half of the State's cost of acquiring and operating the State's voting system, the State's share of the estimated cost would be \$9.4 million.

The amended voting system requirements of Chapter 428 of 2009, allowing for the State's current touchscreen voting machines to be used to provide access for voters with disabilities, are contingent on a voting system that meets the original requirements of Chapters 547 and 548 of 2007 not being commercially available at the time of procurement of a new voting system. In addition, if that contingency is met, and the touchscreen voting units continue to be used to provide access for voters with disabilities once an optical scan system is procured, Chapter 428 of 2009 provides for the use of those machines to be discontinued once a system that complies with the original requirements of Chapters 547 and 548 of 2007 becomes available. To the extent a voting system that meets the original requirements of Chapters 547 and 548 of 2007 becomes available in the near term, the overall equipment costs of a new optical scan voting system will increase to purchase compliant equipment that provides access for voters with disabilities, potentially increasing the costs that will be delayed pursuant to the bill.

Local Fiscal Effect: A delay in the procurement of a new voting system will affect local government expenditures in a similar manner as the State since, pursuant to Chapter 564 of 2001, the counties pay one-half of the State's cost of acquiring and operating the State's voting systems. Local government expenditures are expected to be unaffected by the bill in fiscal 2011, assuming funding for a new voting system will not be included in the fiscal 2011 State budget, but decrease significantly overall in the near term, beginning in fiscal 2012, to the extent a new voting system will otherwise be implemented for future elections. The local share of the estimated additional costs for a new voting system over the first three years of implementation is approximately \$9.4 million. It is assumed the decrease in local government expenditures over the course of fiscal 2012 through 2014 will be comparable to that estimate.

Small Business Effect: To the extent one or more Maryland small businesses may benefit from providing goods or services associated with the implementation of a new voting system, the bill may affect small businesses by delaying those opportunities.

Additional Information

Prior Introductions: SB 970 was assigned to the Senate Education, Health, and Environmental Affairs Committee and HB 1211 of 2009 received a hearing in the House Ways and Means Committee, but no further action was taken on either bill.

Cross File: HB 1060 (Delegate Eckardt, *et al.*) - Ways and Means.

Information Source(s): State Board of Elections; Department of Budget and Management; Baltimore, Carroll, Harford, and St. Mary's counties; Department of Legislative Services

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