

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 174 (Delegates Eckardt and Haddaway-Riccio)
 Ways and Means

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 decrease by approximately \$5.0 million and \$2.3 million in FY 2014 and 2015, respectively, but increase in FY 2016, by approximately \$2.7 million, reflecting a two-year delay in the implementation of a new voting system. The decreased expenditures in FY 2014 and 2015 are delayed and not eliminated expenditures.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	(4,962,000)	(2,251,000)	2,711,000
Net Effect	\$0	\$0	\$4,962,000	\$2,251,000	(\$2,711,000)

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

Local Effect: Local government expenditures collectively decrease by approximately \$5.0 million and \$2.3 million in FY 2014 and 2015, respectively, but increase in FY 2016 by approximately \$2.7 million, reflecting a two-year delay in the implementation of a new voting system. The decreased expenditures in FY 2014 and 2015 are delayed and not eliminated expenditures.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Recent Actions Related to the Implementation of a New Voting System

Chapters 547 and 548 of 2007 specify that the State Board of Elections (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;
- ensure the independent and private casting, inspection, verification, and correction of secret ballots by voters with disabilities in an accessible media by both visual and nonvisual means; and
- comply with accessibility standards adopted as part of the Voluntary Voting System Guidelines (VVSG) pursuant to the federal Help America Vote Act (HAVA) in effect at the time of selection.

At the time of the 2009 General Assembly session, a voting system that would meet all of the requirements of Chapters 547 and 548 of 2007 (in part, one that would both provide a voter-verifiable paper record and meet the accessibility standards of the 2005 VVSG adopted by the U.S. Election Assistance Commission (EAC) under HAVA) was not commercially available. Consequently, Chapter 428 of 2009 was enacted to amend State certification requirements to allow alternate testing and accessibility standards to apply if a voting system that would meet all certification requirements, including those established under Chapters 547 and 548 of 2007, was not commercially available. The alternate standards allow for the State to procure an optical scan voting system that would provide a voter-verifiable paper record but continue to use the State’s existing touchscreen voting machines to provide access for voters with disabilities until an accessible system that would meet all certification requirements became available.

To date, one optical scan voting system, utilizing a ballot marking device for voters with disabilities, has been certified by EAC as meeting the 2005 VVSG, including the accessibility standards within the guidelines. A ballot marking device operates similarly to a touchscreen machine, but marks an optical scan paper ballot with the voter’s choices to be counted with an optical scan machine. Additional systems are currently being tested and could be certified in the future. SBE has indicated in the past that it would rely

on certification of a voting system to the VVSG under the EAC's Voting System Testing and Certification Program to determine whether a voting system meets the accessibility standards of VVSG as part of the broader determination of whether the alternate accessibility standards established under Chapter 428 of 2009 apply.

It is not clear whether the optical scan voting system certified by EAC as meeting VVSG also meets other State certification requirements, such as not creating a segregated ballot for voters with disabilities and allowing for independent, private casting of ballots by voters with disabilities. The alternate accessibility standards under Chapter 428 apply where there is not a commercially available voting system that satisfies *all* State certification requirements, and therefore, at this time it is unclear whether the alternate accessibility standards of Chapter 428 do or do not continue to apply.

Prior to an EAC-certified, accessible optical scan system becoming available, SBE moved forward, under the amended certification requirements of Chapter 428 of 2009, with procurement of an optical scan voting system to be used in conjunction with the State's existing touchscreen voting machines to provide access for voters with disabilities. Before a contract could be awarded, however, funding for the new system was not included in the fiscal 2011 State budget, and, as a result, the 2010 gubernatorial elections were conducted using the State's current DRE touchscreen voting system for all voters. Funding has also not been included in the proposed fiscal 2012 State budget for a new voting system.

Costs of the Current and a New Voting System

The 2010 Budget Reconciliation and Financing Act (Chapter 484) authorized the use of up to \$150,000 from the Fair Campaign Financing Fund in fiscal 2011 for the Department of Legislative Services to contract with an independent consultant to conduct a study of the costs of the State's current voting system in comparison to the costs of implementing an optical scan voting system and other related issues.

The study was completed by RTI International in December 2010 and included various findings and recommendations. The study found, among other things, that over the period from fiscal 2013 to 2020, transitioning to an optical scan system would provide a total cost savings of up to \$9.5 million relative to the cost of continued use of the State's current touchscreen system and replacement of the touchscreen voting machines with new touchscreen machines as they reach the end of their known lifespan.

State Fiscal Effect: Assuming funding will not be included in the fiscal 2012 State budget for a new voting system (as is currently the case in the Governor's proposed fiscal 2012 budget), the bill is not expected to affect State finances in fiscal 2012. Beyond fiscal 2012, general fund expenditures for a new voting system will be delayed,

assuming a voting system would otherwise be procured and implemented for the 2014 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.

Purchasing the new voting system is projected to cost \$35.7 million, with annualized costs initialing totaling approximately \$4.5 million. **Exhibit 1** provides an approximation of the effect on State and county expenditures in the near term of delaying the implementation of a new voting system based on figures from the RTI study. In the near term, general fund expenditures decrease by \$5.0 million and \$2.3 million in fiscal 2014 and 2015, respectively, but increase in fiscal 2016 by \$2.7 million. The decreases in expenditures in fiscal 2014 and 2015 represent delayed and not eliminated expenditures, which will be incurred in later years, as partially shown by the expenditure increase in fiscal 2016 resulting from delayed implementation costs.

The difference in the operations and maintenance costs between the DRE touchscreen system and an optical scan system if the DRE touchscreen system will only be used at most through the 2014 elections appears to be uncertain and is not accounted for in Exhibit 1. Whether the DRE touchscreen system is maintained by repairing the voting machines as needed or performing more comprehensive maintenance on the machines as a whole appears to significantly affect the maintenance cost of the system and consequently whether the overall average annual operations and maintenance costs of the DRE touchscreen system are more or less expensive than operations and maintenance costs of an optical scan system.

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 collectively decrease by approximately \$5.0 million and \$2.3 million in fiscal 2014 and 2015, respectively, but increase in fiscal 2016 by approximately \$2.7 million. The expenditure decreases in fiscal 2014 and 2015 represent delayed and not eliminated expenditures.

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.

Exhibit 1
Comparison of New Voting System Expenditures – Current Law v. HB 174
(\$ in Thousands)

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Current Law					
Capital Costs	-	-	\$4,501	\$4,501	\$4,501
Implementation Costs	-	-	5,422	-	-
HB 174					
Capital Costs	-	-	-	-	4,501
Implementation Costs	-	-	-	-	5,422
Expenditure Increase/ (Decrease) under HB 174			(\$9,923)	(\$4,501)	\$5,422
State Increase/(Decrease)*			(4,962)	(2,251)	2,711
Local Increase/(Decrease)*			(4,962)	(2,251)	2,711

*Chapter 564 of 2001 requires the counties to pay one-half of the State's cost of acquiring and operating the State's voting system.

Notes:

- (1) These capital and implementation costs are taken from the RTI study. For the capital costs, RTI assumed that the voting equipment will mostly be financed over a period of 10 years, with the exception of ballot on demand printers (needed for early voting) being financed over four years. RTI expressed uncertainty about the necessity of the full amount of implementation costs SBE expects to be needed, but the full amount is included here.
- (2) The capital costs include ballot marking devices. As stated in the Background section, it is not clear that the optical scan system certified by EAC as meeting 2005 VVSG meets all State certification requirements, but presumably by the time a system would be procured for the 2014 elections, such a system may be available.
- (3) The actual timing of the included costs may be somewhat different. The implementation costs, for example, may not all be incurred in one fiscal year and depending on when capital lease payments begin, a full year's worth of payments may not be incurred in the first fiscal year. Some of the costs may also begin to be incurred earlier, toward the end of fiscal 2013 and 2015, respectively, under the Current Law and HB 174 scenarios.

Source: RTI International, *Maryland Voting Systems Study* (December 2, 2010); Department of Legislative Services

Additional Information

Prior Introductions: SB 421/HB 1060 of 2010 received hearings in the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee, respectively, but no further action was taken on either bill. SB 970 of 2009 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: SB 21 (Senator Colburn) - Education, Health, and Environmental Affairs.

Information Source(s): RTI International, *Maryland Voting Systems Study* (December 2, 2010); State Board of Elections; Department of Budget and Management; Office of the Attorney General; State Treasurer's Office; Baltimore, Carroll, Cecil, Harford, Montgomery, and Queen Anne's counties; Department of Legislative Services

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mc/hlb

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