

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 1064
 Ways and Means

(Delegate Hixson, *et al.*)

Election Law - Audits of Election Results

This bill requires local boards of elections to, within 10 days after any election and before certifying the results of the election, (1) complete a specified ballot accounting and reconciliation process and (2) beginning in 2018, verify the vote count in statewide contests in regularly scheduled primary and general elections, at least, by conducting specified tabulation audits. The bill also requires that a recount consist of a manual recount of the votes subject to the recount and that if there is a discrepancy between the machine count and the manual count in a recount, the manual count be considered the official and accurate record of the votes cast. An Election Audit Workgroup is established, staffed by the State Board of Elections (SBE) and the Department of Legislative Services (DLS).

The bill takes effect July 1, 2015, and the provisions that establish the workgroup terminate June 30, 2018.

Fiscal Summary

State Effect: General fund expenditures increase by \$95,700 in FY 2016 due to the cost of hiring an auditor within SBE. Future years reflect annualization and inflation. Revenues are not affected.

| (in dollars) | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
|----------------|------------|------------|------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 95,700 | 93,200 | 97,600 | 102,100 | 106,900 |
| Net Effect | (\$95,700) | (\$93,200) | (\$97,600) | (\$102,100) | (\$106,900) |

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

Local Effect: Local government personnel expenditures increase. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Ballot Accounting and Reconciliation

Within 10 days after any election and before certifying the results of the election, a local board of elections must complete a ballot accounting and reconciliation process established by SBE by regulation. The regulations adopted by SBE must require:

- accounting for all ballots used in an election, including ballots used in early voting centers and polling places and those transmitted to absentee voters by mail and electronically; and
- public reporting on SBE's website of (1) the number of absentee ballots sent, returned, and counted; (2) a reconciliation of the number of voters who checked in to vote at each early voting center or polling place and the number of votes cast; and (3) a reconciliation of the vote totals on the voting machine memory cards, the paper reports produced by each voting machine, and the election management system.

Tabulation Audits

Beginning with the 2018 elections, within 10 days after an election and before certifying the results of the election, a tabulation audit of the vote count must be conducted of at least all statewide contests in a regularly scheduled primary and general election. The tabulation audit is a verification or correction of the machine count of votes cast in a contest through a manual count of some or all votes cast. The machine count is the process of vote tallying and tabulation by the State's certified electronic voting system and the manual count is a process of vote tallying and tabulation in which voter-verified paper ballots are inspected by hand and eye to determine the intent of the voter. SBE must adopt specified regulations that govern tabulation audits that provide for, among other things:

- selection of contests to be audited in addition to statewide contests;
- random selection of appropriate groups of ballots ("audit units") for auditing, from among early, polling place, absentee, and provisional ballots;
- auditing only the number of audit units necessary, based on the margin of difference, between the apparent winning candidate and the apparent losing candidate with the highest number of votes, to attain an appropriately high level of confidence that the correct outcome has been determined;

- procedures for investigating and determining the cause of discrepancies and expanding the manual count to additional audit units if needed to determine the correct outcome;
- selection of additional specific audit units for inclusion in an audit at the request of a candidate, a ballot issue committee, a political party, SBE, a local board of elections, or any other interested party as appropriate, with costs of any additional auditing borne by the person requesting the auditing, unless significant discrepancies are revealed, in which case costs are borne by the appropriate local board of elections; and
- public observation of, and comment on, the audit process and public reporting on SBE's website of audit results.

Recounts

The bill requires that a recount petitioned for by a losing candidate or a voter eligible to vote on a ballot question for which the recount is requested consist of a manual count of the votes subject to the recount. If there is a discrepancy between the machine count and the manual count, the manual count is considered the official and accurate record of the votes cast.

Election Audit Workgroup

The Election Audit Workgroup, chaired by the State Administrator of Elections, or the administrator's designee, and staffed by SBE and DLS, must:

- by July 1, 2016, recommend tabulation audit regulations (discussed above) for adoption by SBE;
- direct and oversee a pilot project for a tabulation audit of the contest for President of the United States in the 2016 general election which is conducted after the results of the election are certified and may not alter the certified results; and
- by June 30, 2017, submit to SBE, the Senate Education, Health, and Environmental Affairs Committee, and the House Committee on Ways and Means a report that includes a thorough analysis of the pilot tabulation audit after the 2016 general election and recommendations regarding auditing of other aspects of election administration, including the voter registration process, and the potential use of signature verification to validate that absentee ballots were properly cast.

Current Law:

Verification of Vote Count and Investigation of Errors

Within 10 days after any election and before certifying the results of the election, each board of canvassers (the local board of elections in a county when it has organized itself for the purpose of canvassing the vote after an election) must verify the vote count in accordance with regulations prescribed by SBE for the voting system used in the election. Upon completion of the verification process, the members of the board of canvassers must certify in writing that the election results are accurate and that the vote has been verified.

If a board of canvassers determines that there appears to be an error in the documents or records produced at a polling place following an election, it immediately must investigate the matter to ascertain whether the records or documents are correct.

SBE regulations establish a post-election verification and audit process conducted prior to certification of the election results which has the purpose of (1) demonstrating and confirming the accuracy of the voting system's tabulation logic; (2) confirming that the number of ballots cast equals the number of voters who checked in to vote at a polling place; and (3) ensuring that each accepted absentee and provisional ballot met the application and acceptance criteria and that rejected ballots did not meet the criteria. The verification of the voting system's tabulation logic involves comparing printed out vote totals from the individual voting units from a precinct with the aggregated results for the precinct in the election management system. After 8 p.m. on election day, each local board of elections must randomly select at an open session of the board the greater of three precincts or 5% of all precincts used in the election, for post-election verification and auditing. The State Administrator of Elections may also require a local board of elections to conduct the audit and verification procedures on additional precincts.

Recounts

A candidate who has been defeated based on the certified results of an election or a voter eligible to vote for a specific ballot question may file a petition for a recount of the vote for that office or question. A local board of elections must conduct the recount and certify the official result of the specific election or question in accordance with SBE regulations. SBE regulations give the petitioner different options of how the recount should be conducted, including a manual recount. The petitioner bears the cost of the recount except in certain circumstances, where the outcome changes or the vote totals change by a specified amount, or there is a slim margin of difference between the winning and losing candidates in the original results. In such cases, the county is instead responsible for the costs.

State Fiscal Effect: General fund expenditures increase by \$95,675 in fiscal 2016, which accounts for the bill’s July 1, 2015 effective date. This estimate reflects the cost of hiring an auditor within SBE. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The auditor’s duties include:

- assisting the Election Audit Workgroup in developing regulations and carrying out, analyzing, and reporting on the 2016 pilot project; and
- developing procedures, instructing the local boards of elections, monitoring and assisting the local boards, and conducting post-election reviews and ongoing instruction seminars.

| | |
|---|-----------------|
| Position | 1 |
| Salaries and Fringe Benefits | \$90,805 |
| Other Operating Expenses | <u>4,870</u> |
| Total FY 2016 State Expenditures | \$95,675 |

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Local Fiscal Effect: Local government expenditures are expected to increase in at least some counties to carry out the tabulation audit process. The extent of the audits that will be conducted under the process is not established in the bill but instead is established by SBE by regulation (based on regulations recommended by the workgroup). SBE indicates that it expects that local boards of elections will need to expand staffing to accomplish the auditing. Temporary staff and overtime costs are a significant cost in local boards of elections’ budgets overall. As shown in the **Appendix – Election Administration/Costs in Maryland**, temporary staff and overtime costs made up roughly 9% (\$3.4 million) of the collective local boards of elections’ budgets for fiscal 2014. While the extent of the increase in expenditures for local boards of elections resulting from this bill cannot be reliably estimated, *for illustrative purposes only*, a 5% increase over local boards of elections’ temporary staff and overtime costs in fiscal 2014 results in a \$170,000 collective increase in costs, spread across the local boards.

Local board of elections costs may also increase in limited instances where recounts are requested and local boards bear the cost of a manual recount if, in the absence of the bill, the recount otherwise would have been requested to be conducted by a less time-consuming method, such as automated re-tabulation, under existing regulations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Anne Arundel, Dorchester, Frederick, Garrett, Howard, and Montgomery counties; Maryland Association of Counties; Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2015
md/hlb

Analysis by: Scott D. Kennedy

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