

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 406

(Senator Peters, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Election Law - Voting System - Digital Scanners

This bill requires the State Board of Elections (SBE) to provide at least two digital scanners for each polling place designated by a local board of elections to receive multiple digital scanners. The additional digital scanners must be requested by a local board of elections and approved by the applicable county governing body. The bill also requires SBE to conduct a statewide independent automated software audit of the ballot images for an election, following each primary and general election.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: General fund expenditures may increase beginning in FY 2018, potentially significantly, due to costs associated with additional digital scanners and post-election audits. *For illustrative purposes*, general fund expenditures increase by approximately \$350,000 in the first fiscal year and by approximately \$300,000 annually thereafter to acquire enough additional scanners to provide a second scanner at an additional 25% of the State's polling places. Currently, election officials can provide two scanners at approximately 15% of the State's polling places. This estimate reflects the State's half of the total costs, which are split with the local boards of elections. Revenues are not affected.

Local Effect: Local government expenditures may increase beginning in FY 2018, potentially significantly, reflecting local boards of elections' share of costs associated with additional digital scanners and future post-election audits.

Small Business Effect: None.

Analysis

Bill Summary: A local board must submit a request for additional digital scanners to SBE no later than 12 months before the date of the election for which the scanners are to be deployed. That deadline may be waived by SBE on a showing of good cause. The cost of the additional digital scanners is split evenly between the State and the county to which the scanners are deployed. SBE regulations specifying required supplies and equipment for the voting system must include the supplemental equipment requested and acquired pursuant to the bill.

Current Law:

Voting System

Pursuant to Chapter 564 of 2001, SBE, in consultation with the local boards of elections, must select and certify a voting system for voting in polling places and a voting system for absentee voting to be used in all counties. SBE must acquire the voting system selected and certified for voting in polling places and the voting system selected and certified for absentee voting. Each county must pay its share of one-half of the State's costs of acquiring and operating the uniform statewide voting systems for voting in polling places and for absentee voting, including the cost of maintenance, storage, printing of ballots, technical support and programming, related supplies and materials, and software licensing fees.

SBE must adopt regulations relating to requirements for each voting system selected and certified, including the supplies and equipment required. SBE regulations require that, on Election Day, each precinct have at least one precinct tabulator (scanning and tabulating equipment used by local boards of elections to tabulate ballots) with a ballot box and one transfer bin. For a regularly scheduled primary or general election, the State Administrator of Elections, in consultation with the local boards of elections, must determine the amount of voting equipment assigned to each voting location, taking into consideration (1) estimated turnout for early and absentee voting; (2) historical turnout for each precinct; (3) the length of the ballot; and (4) any other factor deemed to impact turnout and the length of the time to vote.

Verification of Vote Count and Investigation of Errors

The 2016 budget bill (Chapter 143) restricted \$50,000 of SBE's general fund appropriation for general administration in fiscal 2017 until the completion of a post-election tabulation audit following the 2016 general election, using the paper ballots or electronic images of the paper ballots, and the submission of a report on the audit to the budget committees; the Senate Education, Health, and Environmental Affairs Committee; and the House Ways and Means Committee by December 31, 2016.

Under existing statute, 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 (with at least 300 registered voters) 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.

Background:

Voting System

The State's new paper-based voting system was used statewide for the first time in the 2016 elections. A difference between the previous touchscreen system and the paper-based system is that the touchscreen system had multiple touchscreen machines being voted on and tabulating votes at polling places, whereas with the paper-based system, voters are voting at multiple voting booths, but the voted ballots are being scanned by voters into a single ballot scanning machine (scanner) at many polling places. A technical issue or other delay relating to a scanner can therefore potentially have a greater effect on the functioning of a polling place than a technical issue or other delay with one of multiple touchscreen voting machines under the old system.

2016 General Election Post-election Audit

The post-election audit of the 2016 general election was conducted using a software product that performed an independent, automated audit using ballot images imported from the voting system. SBE indicated in its December 2016 report to various legislative committees that the goal of the audit, to verify and confirm the accuracy of the voting system's reported results, was achieved. SBE indicated in the report that it had not made a final decision as to how it will conduct post-election tabulation audits in future elections, but highlighted the importance of taking into account an audit solution's (1) comprehensiveness; (2) ability to provide election officials with data that can benefit poll worker training and performance of the voting system; (3) relative speed; and (4) costs (including costs for staff time).

State Expenditures: General fund expenditures may increase beginning in fiscal 2018, potentially significantly. The extent of any increase, however, cannot be reliably estimated at this time due to uncertainty regarding (1) how many local boards of elections request additional digital scanners under the bill and for how many designated polling places in each requesting county and (2) the extent to which costs are incurred for additional digital scanners and post-election audits in the absence of the bill. SBE has indicated a likelihood that, irrespective of the bill, at least some additional scanners will be acquired for future elections, and the board's comments in the report on the 2016 general election post-election audit suggest a likelihood of similar audits being conducted for future elections. If some amount of costs are incurred for additional scanners and/or post-election audits irrespective of the bill, the general fund expenditure impact attributable to the bill is reduced.

For illustrative purposes only, there are approximately 1,600 polling places in the State, and SBE indicates that the current statewide inventory of digital scanners can provide two digital scanners at approximately 15% of the polling places. If additional scanners are acquired in an amount sufficient to provide 2 scanners at an additional 25% of polling places in the State (400 scanners), general fund expenditures increase by approximately \$350,000 in the first fiscal year and by approximately \$300,000 annually thereafter. This estimate accounts for costs of the scanners, associated equipment, initial shipping, and transportation of the additional scanners and equipment to and from polling places. This estimate also reflects the State's share of the total costs (approximately \$700,000 in the first fiscal year and \$600,000 annually thereafter). This estimate does not account for potential costs for additional warehouse space if a local board or SBE does not have sufficient warehouse space for the additional scanners.

Also for illustrative purposes, the cost of the post-election audit of the 2016 general election was \$275,000 total, split between SBE and the local boards of elections. SBE indicates that it will not know what the cost of post-election audits will be in the future until it conducts a procurement and selects a vendor for a future audit.

Local Expenditures: Local government expenditures, similar to the State expenditures above, may increase beginning in fiscal 2018, potentially significantly. Any local government expenditure increase is expected to be equivalent to the increase in State expenditures, reflecting the local governments' half of costs associated with the additional digital scanners (required to be split between the State and counties by the bill) and the local governments' half of costs associated with post-election audits (assuming future audit costs are split between the State and counties, consistent with the allocation of costs for the 2016 general election audit). Under the illustrative information above, local governments' expenditures would similarly increase by approximately \$350,000 in the first fiscal year and by approximately \$300,000 annually thereafter to acquire 400 additional scanners to provide 2 scanners at an additional 25% of the State's polling places. And, as mentioned above, the total cost of the 2016 general election post-election audit, split between SBE and the local boards, was \$275,000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Baltimore and Prince George's counties; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2017
mm/hlb Third Reader - March 29, 2017
Revised - Amendment(s) - March 29, 2017
Revised - Clarification - March 29, 2017

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