

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 738 (Senator Simonaire, *et al.*)
Education, Health, and Environmental Affairs

Secure Elections Act of 2022

This bill requires the State Board of Elections (SBE), in collaboration with the local boards of elections, to conduct a specified audit of absentee ballots cast in each statewide election. **The bill takes effect September 1, 2022.**

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: Local government expenditures increase beginning in FY 2023, as discussed below. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Audit Requirement and Process

The bill requires SBE, in collaboration with the local boards of elections, to conduct an audit of absentee ballots cast in each statewide election. Each local board must canvass absentee ballots in batches that contain an equal number of absentee ballots. SBE, by regulation, must determine the number of absentee ballots in each batch.

Each local board must audit 3% of the otherwise legally sufficient absentee ballots in each batch before the ballots are canvassed, until the number of absentee ballots audited equals the audit total. “Audit total” means 3% of the number of absentee ballots cast in a county in the previous comparable election (for a primary election, the primary election held four years earlier, and for a general election, the general election held four years earlier). Absentee ballots in each batch must be randomly selected for audit, and the audit must consist of verifying that the voter’s signature for each selected ballot matches the signature in the voter’s registration record. The audit must be conducted by a team that includes one member of the majority party and one member of the principal minority party.

Unverified Signatures

If a signature cannot be verified, the local board must make reasonable efforts to notify the voter of the discrepancy and obtain a new signature from the voter for verification. After making those efforts, if the local board has not received a signature from a voter that can be verified, the voter’s absentee ballot must be rejected.

If Audit Threshold Is Exceeded

If, during the canvass of absentee ballots, the total number of signatures that cannot be verified – before the local board makes efforts to notify voters of discrepancies and obtain new signatures – exceeds the audit threshold (defined as 0.5% of the “audit total”) in a county, the local board must, from the time that the audit threshold is exceeded, audit all the absentee ballots that remain to be canvassed. The local board must also notify SBE within 24 hours if the audit threshold is exceeded.

Reporting

Within 24 hours after the completion of the absentee ballot canvass, each local board must report specified information from the audit, and SBE must post each report on its website within 24 hours after the report is received.

Regulations

SBE must adopt regulations to carry out the bill, which must include the method for verifying voter signatures and a deadline for submission of a new signature by a voter whose signature could not be verified.

Current Law:

Absentee (Mail-in) Voting

An individual may vote by absentee (mail-in) ballot except to the extent preempted by federal law. An absentee ballot may be requested in writing (there are State and federal forms that can be used) or online through the SBE website. The voter may choose to receive the ballot by mail, by fax, through the Internet, or by hand at a local board of elections office. The voter may return the ballot by (1) mailing it, postmarked on or before Election Day; (2) depositing it into a ballot drop box before the polls close on Election Day; or (3) delivering it in person to an early voting center or to the local board of elections or an Election Day polling place by the close of polls on Election Day.

Absentee Ballot Envelopes

An absentee ballot sent by mail must be enclosed in specially printed envelopes, the form and content of which must be prescribed by SBE. A local board of elections may use either two envelopes (“outgoing envelope” and “ballot/return envelope”) or three envelopes (“outgoing envelope,” “return envelope,” and “ballot envelope”). The ballot/return envelope or the return envelope must include prepaid postage. When voted and returned to the local board, an absentee ballot must be enclosed in a ballot envelope or ballot/return envelope, which must include an oath prescribed by SBE.

If an absentee ballot is sent by the Internet or facsimile transmission, the local board must provide the voter with an envelope template.

Canvassing of Absentee Ballots

A local board of elections may not reject an absentee ballot except by unanimous vote and in accordance with SBE regulations. A local board must reject an absentee ballot if the voter failed to sign the oath on the ballot envelope. SBE regulations require an election director to notify a voter, if their absentee ballot is timely received but the voter did not sign the oath, of how the voter can provide a signed oath and when the oath must be received for the voter’s ballot to be accepted. SBE regulations establish a process for the canvassing of absentee ballots that includes (1) the issuance by the election director, to canvassing teams, of batches of returned absentee ballots, consisting of a controllable number of ballots (with 25 given as an example); (2) verification by the canvassing teams of the timeliness of the return of a ballot, that the oath is signed, and that the return envelope is sealed; and (3) opening of ballot envelopes by the canvassing teams and inspection of ballots for compliance and tabulating acceptability prior to tabulation.

Post-election Verification and Audit

SBE regulations require completion of specified verification and audit procedures before certification of results of an election, which include the random selection and review, by the election director, of a number of accepted and rejected absentee and provisional ballots established by the State Administrator of Elections. The randomly selected accepted absentee ballots must be reviewed to determine whether each ballot was properly accepted by confirming that a timely absentee ballot request was received from the voter and the absentee ballot was timely received. The randomly selected rejected absentee ballots must be reviewed to determine whether each ballot was properly rejected by confirming that the absentee ballot was not timely received or was rejected for another valid reason.

If the audit demonstrates that an absentee ballot or provisional ballot was improperly rejected, the ballot must be accepted and counted prior to certification of the election. If the audit demonstrates that absentee and provisional ballots were improperly accepted and that discrepancy is less than the vote margin of any contest on the ballot in that county, the election must be certified by the local board of elections. If the discrepancy is greater than the vote margin of any contest on the ballot, the election may not be certified until any corrective actions required by the State Administrator are completed.

Local Fiscal Effect: Local government expenditures increase beginning in fiscal 2023 for personnel, training, and/or equipment/software costs associated with implementing the bill's audit requirement. Prince George's County, for example, estimates it would incur additional temporary personnel costs of \$5,600 per election for four temporary employees to verify 3% of mail-in ballot signatures (assuming the audit threshold is not exceeded). Based on information gathered by the Department of Legislative Services (DLS) in the beginning of 2021 from a small number of jurisdictions in Colorado and Oregon, costs for signature verification training for those employees may be an additional \$4,700 per election.

It is unclear to what extent, in a given election, local boards of elections may have to audit larger numbers of ballots due to exceeding the audit threshold. If the audit threshold is exceeded, counties may need additional equipment and/or software to assist with signature verification of larger numbers of ballots in a limited timeframe. Based on the information gathered by DLS in 2021 (mentioned above), a lower-volume mail sorting machine (capable of verifying signatures on up to 35,000 ballots per election), with signature verification features, may cost \$50,000 with ongoing maintenance costs in future years of \$7,500. Some counties may incur greater costs, for higher-volume equipment/software options. *For illustrative purposes*, under the bill, for the 2022 general election, the highest audit threshold will be 6, in Montgomery County, and the lowest audit threshold will be 1, in most counties, based on mail-in ballots cast in the 2018 general election (the previous comparable election). The audit total and audit threshold for counties will vary over the

next few elections due to the variance in the level of mail-in voting over the course of the 2018, 2020, and 2022 elections (that will serve as the previous comparable elections under the bill, for the 2022, 2024, and 2026 elections, respectively).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Carroll, Howard, and Prince George's counties; Eagle County, Colorado; Multnomah County, Oregon; Department of Legislative Services

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