

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 339

(Senator Kagan)

Education, Energy, and the Environment

Ways and Means

Election Law – Recounts – Procedures

This bill requires a petitioner for a recount to select the method for conducting the recount, from among specified methods. The bill also requires a local board of elections to (1) preserve and store certain voter-verifiable paper records together with their corresponding duplicate ballots and (2) in a manual recount, count the duplicate ballot after review of the voter-verifiable paper record. **The bill takes effect July 1, 2023.**

Fiscal Summary

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

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a petitioner for a recount to select the method for conducting the recount. The petitioner may select only one of the following methods: (1) rescanning the ballots using the same vote tabulating equipment that was used in the election or alternative vote tabulating equipment, if alternative equipment is available and its use is feasible, as determined by the State Board of Elections (SBE); (2) a manual recount of voter-verifiable paper records; or (3) any other recount method approved by the State Administrator of Elections.

The bill also requires a local board of elections to (1) preserve the voter-verifiable paper record corresponding to each duplicate ballot that is created; (2) store each duplicate ballot

that is created together with the corresponding voter-verifiable paper record; and (3) in a manual recount, count the duplicate ballot after review of the voter-verifiable paper record.

“Duplicate ballot” means a paper ballot that:

- is created by a local board for purposes of vote tabulation by an optical scanner because the voter-verifiable paper record submitted by the voter is not acceptable for vote tabulation by an optical scanner and;
- is a copy of a voter-verifiable paper record that (1) for an absentee ballot returned by mail, reflects the intent of the voter, or (2) for a provisional ballot, includes only the votes for contests for which the voter is eligible to vote.

“Voter-verifiable paper record” has the meaning stated in § 9-102 of the Election Law Article of the Maryland Code, and means (1) a paper ballot prepared by the voter for the purpose of being read by a precinct-based optical scanner; (2) a paper ballot prepared by the voter to be mailed to the applicable local board, whether mailed from a domestic or an overseas location; and (3) a paper ballot created through the use of a ballot marking device.

Current Law:

Recount Provisions under the Election Law Article

A candidate for public or party office who has been defeated based on the certified results of any election conducted under the Election Law Article may petition for a recount of the votes cast for the office sought. However, a candidate may not petition for a recount if the margin of difference between the number of votes received by an apparent winner and the losing candidate with the highest number of votes for the office is greater than 5% of the total votes cast for those candidates. The petition must be filed within three days after the results of the election have been certified, with the board with which the candidate's certificate of candidacy was filed and must specify that the recount be conducted in all of the precincts in which the office was on the ballot or only in the precincts designated in the petition.

A registered voter eligible to vote for a question on the ballot in an election conducted under the Election Law Article may file a petition for a recount based on the certified results of the question. However, a registered voter may not file a petition for a recount if the margin of difference between the number of votes cast for and the number of votes cast against the question is greater than 5%. The petition must be filed within three days after the results of the election are certified and must specify that the recount be conducted in all of the precincts in which the question was on the ballot or only in precincts designated in the petition. If the question was on the ballot in one county, the petition must be filed in

that county. If the question was on the ballot in more than one county, the petition must be filed with SBE.

SBE must promptly notify each appropriate local board of elections of a petition that is filed with SBE, and a local board must promptly notify SBE of a petition that is filed with the local board.

SBE Regulations

SBE regulations governing recounts require the petitioner to specify whether the recount must be conducted by (1) manually retabulating the printed election totals reports; (2) rescanning all ballots using the same vote tabulating equipment that was used in the election or alternative vote tabulating equipment, if alternative equipment is available and its use is feasible; (3) manually retabulating all ballots; or (4) any other recount option approved by the State Administrator.

During absentee and provisional ballot canvassing, if a ballot is determined to be unacceptable for machine tabulation, the ballot must be duplicated. Following duplication, the original ballot must be replaced by the duplicate ballot and the duplicate ballot must be counted with the ballots for that precinct. Both ballots must be given a unique identifying number and be securely attached to each other.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 642 (Delegate Grossman, *et al.*) - Ways and Means.

Information Source(s): Anne Arundel, Baltimore, Carroll, Charles, Howard, and Prince George's Counties; Maryland State Board of Elections; Department of Legislative Services

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