

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 89 (Senator Kagan)  
Education, Health, and Environmental Affairs

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**State Board of Elections - Certification of Voting Systems - Standards**

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This bill establishes that the State Board of Elections (SBE) may not certify a voting system unless the board determines that the voting system will accommodate multiple methods of voting, including ranked choice voting.

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**Fiscal Summary**

**State Effect:** General fund expenditures may increase in future years, by an indeterminate amount, as discussed below.

**Local Effect:** Local government expenditures may increase in future years, by an indeterminate amount, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** State law requires SBE, in consultation with the local boards of elections, to select and certify a voting system for voting in polling places and a voting system for absentee voting, to be used in all counties. Various standards must be met in order for SBE to certify a voting system. SBE must determine that the voting system will:

- protect the secrecy of the ballot;
- protect the security of the voting process;
- count and record all votes accurately;
- accommodate any ballot used under the Election Law Article of the Maryland Code;

- protect all other rights of voters and candidates;
- be capable of creating a paper record of all votes cast in order that an audit trail is available in the event of a recount, including a manual recount; and
- provide a voter verifiable paper record that (1) is an individual document that is physically separated from any other similar document and not part of a continuous roll; (2) is sufficiently durable to withstand repeated handling for the purposes of mandatory random audits and recounts; and (3) uses ink that does not fade, smear, or otherwise degrade and obscure or obliterate the paper record over time.

SBE must also determine that:

- the voting system has been (1) examined by an independent testing laboratory approved by the U.S. Election Assistance Commission (EAC) and (2) shown by the testing laboratory to meet the performance and test standards for electronic voting systems established by the Federal Election Commission or EAC; and
- the public interest will be served by the certification of the voting system.

A voting system selected, certified, and implemented also must:

- provide access to voters with disabilities that is equivalent to access afforded voters without disabilities without creating a segregated ballot for voters with disabilities;
- ensure the independent, private casting, inspection, verification, and correction of secret ballots by voters with disabilities in an accessible media by both visual and nonvisual means, including synchronized audio output and enhanced visual display; and
- comply with both the Americans with Disabilities Act and the Help America Vote Act, including accessibility standards adopted as part of the Voluntary Voting System Guidelines pursuant to the Help America Vote Act.

**Background:** Ranked choice voting is a system in which voters, rather than choosing a candidate or candidates for an office, rank the candidates for an office by their preference for each candidate. The manner in which the ranked choice voting results are tabulated can differ; however, a common method of ranked choice voting tabulation, as described by the National Conference of State Legislatures, is (1) the ballots are counted per each voter's number-one preference; (2) if no candidate receives 50% or more in that first round, the candidate with the fewest number of votes is eliminated, and the votes are counted again; (3) if a voter's number-one choice was the eliminated candidate, then the vote is given to that voter's second-choice candidate; and (4) the elimination process is repeated until one candidate tops 50%.

In Maryland, the City of Takoma Park has used ranked choice voting in municipal elections since 2007. It is used in a number of cities in other states, with some of the largest being Berkeley, Oakland, San Francisco, and San Leandro, in California; Minneapolis and St. Paul, in Minnesota; Cambridge, Massachusetts; Santa Fe, New Mexico; Portland, Maine; and, beginning in 2021, New York City. Ranked choice voting was used in statewide elections for the first time in 2018, in Maine, where it was used for state and federal offices in the June primary election and for federal offices in the November general election. Maine's use of ranked choice voting has also been recently expanded and will be used for the November presidential race in 2020.

**State and Local Fiscal Effect:** State general fund expenditures and local government expenditures may increase in future years for the cost of the State's voting system, when the time comes for the State to select and certify a new voting system (it is uncertain at this time when that might occur). The State shares the costs of the statewide voting system with the counties pursuant to Chapter 564 of 2001.

Adding the certification requirement that the State's voting system accommodate multiple methods of voting, including ranked choice voting, may limit the number of vendors available to bid on the contract and/or increase the dollar amount of individual bids, resulting in increased costs for the voting system. Reduced competition for contracts has been shown to generally result in higher procurement costs, although potential the effect on a single contract is more difficult to predict. The extent to which future voting system costs would increase as a result of this bill, if at all, cannot be reliably estimated.

To provide context, costs under the contract for the State's current voting system total approximately \$37 million over the course of the 2016, 2018, and 2020 elections. Any impact of this bill on a future voting system contract presumably would be a small fraction of the overall cost of the contract.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** State Board of Elections; Anne Arundel, Howard, and Montgomery counties; National Conference of State Legislatures; FairVote.org; Department of Legislative Services

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