

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1165
Ways and Means

(Delegate Cox)

Election Law - Manual Postelection Tabulation Audit - Timing and Effect

This bill requires that the manual audit of voter-verifiable paper records that is completed as part of the State Board of Elections' (SBE) audit of the accuracy of the voting system's tabulation of votes after each statewide general election, be completed before certification of the election results, instead of within 120 days after the general election. The bill also requires that if the manual audit finds that the vote totals produced by the electronic voting system are incorrect, the official result of the election must be altered to match the result found by the manual audit.

Fiscal Summary

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

Local Effect: Local government expenditures are expected to increase in at least some counties; for example, by approximately \$4,000, \$6,500, and \$10,000 in FY 2023 and future years in which a general election occurs, in Frederick, Prince George's, and Montgomery counties, respectively.

Small Business Effect: None.

Analysis

Current Law:

Post-election Audit Requirements

Pursuant to Chapter 523 of 2018, SBE is required to conduct an audit of the accuracy of the voting system's tabulation of votes, following each statewide general election, by

completing (1) an automated software audit of the electronic images of all ballots cast in the election and (2) a specified manual audit of voter-verifiable paper records. Following each statewide primary election, SBE (1) must complete an automated software audit of the electronic images of all ballots cast in the election and (2) may complete a manual audit of voter-verifiable paper records in a manner prescribed by SBE.

Manual Audit (Post-general Election) and Reporting

The manual audit of voter-verifiable paper records required to be conducted following each statewide general election must be of (1) at least 2% of precincts statewide, including at least one randomly chosen precinct in each county and additional precincts selected by SBE and (2) a number of votes equal to at least 1% of the statewide total in the previous comparable general election of early votes, of absentee votes, and of provisional votes, including at least a minimum number of early votes, absentee votes, and provisional votes in each county, as prescribed by SBE. “Previous comparable general election” is defined as (1) in a presidential election year, the presidential election held four years earlier and (2) in a gubernatorial election year, the gubernatorial election held four years earlier.

The manual audit must be completed within 120 days after the general election. If the manual audit shows a discrepancy, SBE is authorized to expand the manual audit and take any other actions it considers necessary to resolve the discrepancy.

Within 14 days after the conclusion of the audit, SBE must post a report on its website that describes (1) the precincts and number of votes selected for the manual audit in each county and the manner in which the precincts and votes were selected; (2) the results of the manual audit; and (3) any discrepancy shown by the manual audit and how the discrepancy was resolved. SBE must allow for public observation of each part of the manual audit process to the extent practicable.

SBE Regulations and the Effect of the Audits

An audit pursuant to the provisions established under Chapter 523 may not have any effect on the certified election results and must be used to improve the voting system and voting process for future elections.

SBE is required to adopt regulations to implement the provisions established under Chapter 523.

Local Fiscal Effect: Local government expenditures are expected to increase, due to costs of temporary staff and/or overtime to complete the manual audit before certification of the election results. Local boards of elections conduct the manual audits and completing the manual audit before certification of the results will limit local boards’ ability to conduct

the audit using regular staff during regular work hours. Frederick, Prince George's, and Montgomery counties, for example, expect to incur increased costs of approximately \$4,000, \$6,500, and \$10,000, respectively, in fiscal 2023 and future years in which a general election occurs.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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