

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1348  
Ways and Means

(Delegate Cox, *et al.*)

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Election Law - Manual Postelection Tabulation Audit - Timing and Selection

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This bill establishes a new manual audit process that must be conducted following each statewide primary and general election, replacing the existing manual audit that must be conducted following each statewide general election. The new manual audit must begin on the same day the final ballots are canvassed, and 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. **The bill takes effect June 1, 2022.**

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Fiscal Summary

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

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

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill replaces the existing manual audit of voter-verifiable paper records required to be conducted following each statewide general election (described below under Current Law) with a new, specified manual audit of voter-verifiable paper records required to be conducted following each statewide *primary and* general election.

“Manual audit” means inspection of voter-verifiable paper records by hand and eye to obtain vote totals in a contest that are compared to the vote totals produced for that contest by the electronic voting system.

The bill establishes a specified process that results in a ballot scanner machine being selected at random from each of a number of randomly selected ballot scanning locations (early voting centers, polling places, and canvassing/counting centers) equivalent to 3% of ballot scanning locations. The selected ballot scanner machines from those locations are then manually audited.

Election judges, local board members, and board of canvassers members may be observed while performing their duties under the audit process by (1) authorized challengers, watchers, and observers; (2) any candidate; (3) any representative of an interested political party; and (4) any other individual lawfully present.

Certain provisions that apply to the existing manual audit are retained and apply to the new manual audit, specifically:

- If the manual audit shows a discrepancy, the State Board of Elections (SBE) may 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 on its website a specified report on the audit.
- SBE must allow for public observation of each part of the manual audit to the extent practicable.
- The audit must be used to improve the voting system and voting process for future elections.

The bill modifies an existing provision that specifies that an audit may not have any effect on the certified election results so that the provision only applies to an automated software audit. The bill also replaces a requirement that the manual audit be completed within 120 days after the election with a requirement that the manual audit begin on the same day the final ballots are canvassed. The bill establishes a new requirement 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.

SBE must adopt regulations to carry out the bill’s provisions.

## **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, beginning in fiscal 2023, for additional personnel costs associated with conducting the audit beginning on the day the final ballots are canvassed and presumably completed prior to the certification of election results. Expenditures are expected to increase for both the primary and general elections, without any significant savings from the repeal of the existing manual audit, which is not required to be completed before certification of election results and provides more flexibility for local boards to complete the audit with existing staff during regular work hours.

Local government expenditure increases may be relatively minimal in most cases, as indicated by the illustrative example below; however, the possibility of one or more early voting center or canvassing/counting center ballot scanner machines (which will have scanned a greater volume of ballots than a polling places ballot scanner machine) being selected may increase costs for a given local board of elections. Any expansion of the audit to resolve a discrepancy also increases costs.

*For illustrative purposes*, if it is assumed that, on average, 1.5% of ballots cast are manually audited under the bill (assuming that, on average, the selection of one ballot scanner machine from each location results in auditing of half the ballots scanned in those locations), and making certain assumptions about the pay rate of temporary auditing personnel (\$20/hour) and the number of ballots audited per hour by a two-person, bipartisan team (60 ballots), statewide costs for those temporary personnel are in the range of \$9,000 for the 2022 primary election and \$25,000 for the 2022 general election (due to a larger volume of ballots cast in the general election). Local boards of election likely will incur other costs that have not been quantified, however, such as overtime of regular employees.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Harford, and St. Mary's counties; State Board of Elections; Department of Legislative Services

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