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TO: The Honorable Anne R. Kaiser
Chair, Ways and Means Committee

FROM: Office of the Attorney General

RE: HB 1165 – Election Law; Manual Post-Election Tabulation Audit; Timing and Effect –
Oppose

The Office of Attorney General urges this Committee to unfavorably report HB 1165.

House Bill 1165 would alter the current statutory and regulatory audit procedures by requiring the manual audit – essentially, a manual recount of thousands of ballots statewide – to take place prior to the certification of election results (whether by the local boards of canvassers or the State Board of Canvassers, the bill does not specify), and would require the official election results to be “altered” to match the results of the manual audit in the event of a discrepancy. This remedy is administratively burdensome, incomplete on its own terms and, in any event, unnecessary.

First, to move the manual audit process to the short period of time prior to certification — without extending certification deadlines — would require an enormous reallocation of resources from the canvass of ballots to the auditing of ballots. Thousands of ballots statewide would need to be manually counted under this proposal during a period of as little as 10 days, all while absentee ballots and provisional ballots are being canvassed by local boards.¹ At minimum, conducting the audit during this period will require extending post-election certification timelines, threatening voter confidence in the integrity of the election.

Second, even on their own terms the proposed changes would require election results to reflect audit results in only the narrow selection of ballots that are subject to the audit. The law

¹ Election results are required to be certified by local boards on the second Friday following an election. Elec. Law § 11-401(c)(1).

currently requires two percent of precincts and one percent of early, absentee, and provisional ballots statewide to be audited. *See* Md. Code Ann., Elec. Law § 11-309(d)(1). If there are discrepancies, the proposed bill would require changes only to those results, without expanding or extending the audit to cover a broader set of ballots. In the event of a significant discrepancy, this could cast doubt on the results that were not subject to the audit, further undermining confidence in the elections.

Finally, the proposed changes are unnecessary, as the current automated software audit effectively consists of an independent retabulation of *every ballot cast* in an election on a different voting system, with the results of this audit – as well as the explanation for and steps taken to resolve any significant discrepancy – published prior to the statewide certification of the election. Accordingly, any significant discrepancy in any contest or jurisdiction in the State would already come to light prior to the certification of the election under current audit procedures.

For the foregoing reasons, the Office of the Attorney General urges an unfavorable report on House Bill 1165.

cc: Members of the Ways and Means Committee