

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL 392  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, strike “EMERGENCY BILL”; strike beginning with “requiring” in line 3 down through “systems” in line 16 and substitute “prohibiting the State Board of Elections from certifying a voting system unless the State Board determines that the voting system provides independently verifiable voting records; defining a certain term; clarifying the standard to be considered by the State Board when evaluating whether a voting system is accessible to voters with disabilities; requiring the Attorney General to make a certain determination and to provide notice of the determination in writing to the Department of Legislative Services; making this Act subject to a certain contingency; requiring the Department of Budget and Management to make a certain determination and provide a certain notification by a certain time; providing for the application of this Act; and generally relating to voting systems and voter-verified records”; and strike in their entirety lines 17 through 21, inclusive.

On page 2, strike line 1 in its entirety; in line 4, strike “1-101(xx)” and substitute “9-102”.

AMENDMENT NO. 2

On pages 2 through 11, strike beginning with line 7 on page 2 through line 23 on page 11, inclusive, and substitute:

“SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Election Law

9-102.

(Over)

(A) IN THIS SECTION, AN “INDEPENDENTLY VERIFIABLE VOTING RECORD” INCLUDES:

(1) A SEPARATE, INDIVIDUAL PAPER PRINTOUT, THAT IS NOT PART OF A CONTINUOUS ROLL, OF THE VOTER’S VOTE THAT IS PRODUCED BY A TOUCH SCREEN OR OTHER ELECTRONIC VOTING MACHINE AND WHICH IN EACH CASE ALLOWS THE VOTER TO VERIFY THE RECORD IN ACCORDANCE WITH THIS SECTION;

(2) A PAPER BALLOT PREPARED BY THE VOTER FOR THE PURPOSE OF BEING READ BY A PRECINCT-BASED OPTICAL SCANNER;

(3) A PAPER BALLOT PREPARED BY THE VOTER TO BE MAILED TO THE APPLICABLE LOCAL BOARD, WHETHER MAILED FROM A DOMESTIC OR AN OVERSEAS LOCATION;

(4) A PAPER BALLOT CREATED THROUGH THE USE OF A BALLOT MARKING DEVICE; AND

(5) AN INDEPENDENT AND AUDITABLE RECORD OF ALL VOTES CAST THAT IS CREATED:

(I) BY:

1. SOFTWARE THAT IS INDEPENDENT OF THE VOTING SYSTEM SOFTWARE; OR

2. AN INDEPENDENT RECORDING DEVICE; AND

**(II) CONTEMPORANEOUSLY WITH THE VOTER'S VOTE.**

**[(a)] (B) The State Board shall adopt regulations for the review, certification, and decertification of voting systems.**

**[(b)] (C) The State Board shall periodically review and evaluate alternative voting systems.**

**[(c)] (D) The State Board may not certify a voting system unless the State Board determines that:**

**(1) the voting system will:**

**(i) protect the secrecy of the ballot;**

**(ii) protect the security of the voting process;**

**(iii) count and record all votes accurately;**

**(iv) accommodate any ballot used under this article;**

**(v) protect all other rights of voters and candidates; [and]**

**(vi) 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**

**(VII) PROVIDE AN INDEPENDENTLY VERIFIABLE VOTING 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;

(2) the voting system has been:

(i) examined by an independent testing laboratory that is approved by the National Association of State Election Directors; and

(ii) shown by the testing laboratory to meet the performance and test standards for electronic voting systems established by the Federal Election Commission; and

(3) the public interest will be served by the certification of the voting system.

[(d)] (E) In determining whether a voting system meets the required standards, the State Board shall consider:

(1) the commercial availability of the system and its replacement parts and components;

(2) the availability of continuing service for the system;

- (3) the cost of implementing the system;
- (4) the efficiency of the system;
- (5) the likelihood that the system will malfunction;
- (6) the system's ease of understanding for the voter;
- (7) the convenience of voting afforded by the system;
- (8) the timeliness of the tabulation and reporting of election returns;
- (9) the potential for an alternative means of verifying the tabulation;

(10) accessibility for all voters with disabilities recognized by the Americans with Disabilities Act, INCLUDING FEATURES WHICH:

(I) ENSURE THAT ACCESSIBILITY FOR VOTERS WITH DISABILITIES IS EQUIVALENT TO THAT AFFORDED TO VOTERS WITHOUT DISABILITIES;

(II) DO NOT REQUIRE THE CREATION OF A SEGREGATED BALLOT FOR VOTERS WITH DISABILITIES; AND

(III) ALLOW FOR THE INDEPENDENT AND PRIVATE CASTING, INSPECTION, VERIFICATION, AND CORRECTION OF THE BALLOT BY VOTERS WITH DISABILITIES; and

- (11) any other factor that the State Board considers relevant.

[(e)] (F) (1) The State Board shall adopt regulations relating to requirements for each voting system selected and certified under § 9–101 of this subtitle.

(2) The regulations shall specify the procedures necessary to assure that the standards of this title are maintained, including:

(i) a description of the voting system;

(ii) a public information program by the local board, at the time of introduction of a new voting system, to be directed to all voters, candidates, campaign groups, schools, and news media in the county;

(iii) local election officials' responsibility for management of the system;

(iv) the actions required to assure the security of the voting system;

(v) the supplies and equipment required;

(vi) the storage, delivery, and return of the supplies and equipment necessary for the operation of the voting system;

(vii) standards for training election officials in the operation and use of the voting system;

(viii) before each election and for all ballot styles to be used, testing by the members of the local board to ensure the accuracy of tallying, tabulation, and reporting of the vote, and observing of that testing by representatives of political parties and of candidates who are not affiliated with political parties;

(ix) the number of voting stations or voting booths required in each polling place, in relation to the number of registered voters assigned to the polling place;

(x) the practices and procedures in each polling place appropriate to the operation of the voting system;

(xi) assuring ballot accountability in systems using a document ballot;

(xii) the actions required to tabulate votes; and

(xiii) postelection review and audit of the system's output.

(3) Certification of a voting system is not effective until the regulations applicable to the voting system have been adopted.”.

AMENDMENT NO. 3

On page 11, in line 24, strike “3.” and substitute “2.”; and in line 25, strike “2008” and substitute “2010”.

AMENDMENT NO. 4

On page 12, strike in their entirety lines 1 through 12, inclusive, and substitute:

“SECTION 3. AND BE IT FURTHER ENACTED, That, if the Attorney General determines on or after the effective date of this Act that any provision of this Act is in conflict with any law of the United States or a rule, regulation, or policy of the federal Election Assistance Commission, the conflicting provision of this Act shall be abrogated and of no force or effect. The Attorney General, within 5 days after determining the existence of a conflict, shall notify in writing the Department of Legislative Services, Legislative Services Building, 90 State Circle, Annapolis, MD 21401.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on the appropriation of sufficient general, special, or federal funds in the State budget no later than fiscal year 2009 for the State Board of Elections to perform the functions set forth in Section 1 of this Act, and if sufficient funds are not appropriated in the State budget to the State Board of Elections by fiscal year 2009 to perform the functions set forth in Section 1 of this Act, this Act shall be null and void without the necessity of further action by the General Assembly. Within 10 days after the fiscal year 2009 budget has been enacted by the General Assembly, the Department of Budget and Management shall determine and notify the Department of Legislative Services whether sufficient general, special, or federal funds have been appropriated in the fiscal year 2009 budget for the State Board of Elections to perform the functions set forth in Section 1 of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Sections 2 through 4 of this Act, this Act shall take effect October 1, 2007.”.