

D38I01
State Board of Elections

Operating Budget Data

(\$ in Thousands)

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05-06</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$5,064	\$5,297	\$4,929	-\$368	-7.0%
Special Fund	2,733	5,667	7,707	2,040	36.0%
Federal Fund	<u>3,246</u>	<u>13,104</u>	<u>10,996</u>	<u>-2,108</u>	<u>-16.1%</u>
Total Funds	\$11,043	\$24,068	\$23,632	-\$436	-1.8%
Contingent & Back of Bill Reductions			-16	-16	
Adjusted Total	\$11,043	\$24,068	\$23,616	-\$453	-1.9%

- Funding for general administrative expenses at the State Board of Elections (SBE) falls in fiscal 2006.
- Overall spending on the new voting system decreases in fiscal 2006. However, \$4.5 million is added for the development of a new statewide voter registration system, and \$1.8 million is included as a placeholder for the final implementation (Phase 3) of the new voting system in Baltimore City.

Personnel Data

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05-06</u> <u>Change</u>
Regular Positions	32.50	32.50	32.50	0.00
Contractual FTEs	<u>11.00</u>	<u>9.00</u>	<u>9.00</u>	<u>0.00</u>
Total Personnel	43.50	41.50	41.50	0.00

Vacancy Data: Regular Positions

Turnover, Excluding New Positions	1.46	4.49%
Positions Vacant as of 12/31/04	3.00	9.23%

- There is no change in the personnel allocation for SBE in the fiscal 2006 allowance.

Numbers may not sum to total due to rounding.

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Analysis in Brief

Major Trends

Compliance with the Federal Help America Vote Act (HAVA): SBE continues to move forward with measures to comply with HAVA. The development of a new statewide voter registration system and the implementation of Phase 3 of the new voting system are testament to that progress.

Lessons Learned: As part of its efforts to understand and correct issues with the new voting system, SBE was presented with lessons learned from the 2004 primary election. A follow-up from the 2004 general election is anticipated shortly.

Issues

Federal HAVA Funds, Funding Responsibilities, and Cost Estimates: The State of Play: The status of federal HAVA fund receipt as well as spending patterns will be reviewed and an analysis of statutory funding responsibilities will be discussed.

The Security of the Statewide Voting System: SBE's response to two separate security assessments performed on the new voting system in 2003 will be provided.

Recommended Actions

	<u>Funds</u>
1. Add budget language to withhold funds pending the submittal of a report on the proposed statewide voter registration system.	
2. Reduce funds for contractual support.	\$ 24,000
3. Reduce general funds based on the availability of federal funds.	1,130,000
Total Reductions	\$ 1,154,000

Updates

Late Filing Fees: *Joint Chairmen's Report* language from 2004 required SBE to report back on the extent of uncollected late filing fees assessed for failure to file a campaign finance report. That report and its recommendations are summarized.

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Operating Budget Analysis

Program Description

The State Board of Elections (SBE) is a five-member board charged with managing and supervising elections in the State of Maryland and ensuring compliance with State and federal election laws, including the recent federal Help America Vote Act (HAVA). Individuals from both major parties are appointed by the Governor, with the advice of the Senate, to staggered four-year terms. The board appoints a State administrator, who is charged with oversight of the board's functions and supervising operations of the local election boards.

Local election boards maintain local voter registration databases, establish election precincts and staff polling places, provide and process absentee ballots, certify local election results, and hear and decide appeals concerning voter registration, challenges to the right to vote, and absentee ballots.

The mission of the SBE is to administer the process of holding democratic elections in a manner that inspires public confidence and trust.

Performance Analysis: Managing for Results

The SBE's Managing for Results (MFR) submission includes performance measures that distinguish between HAVA and non-HAVA-related activities. For HAVA-related activities, SBE's performance can be guided by the State Plan that SBE is required to submit to the federal government that details how the State intends to implement and become compliant with HAVA. **Exhibit 1** details various HAVA requirements, deadlines, and the status of compliance with those deadlines.

As noted last year, SBE has been able to comply with most HAVA requirements. Key changes from last year include:

- SBE is now more actively moving forward with the development of a new statewide voter registration system, having issued a Request for Proposals in November (see additional discussion under Governor's Proposed Budget). It is difficult to predict if the development and implementation of a complex information technology system can be done by the January 1, 2006 deadline.
- In terms of meeting voting system standards requirements, SBE notes that these standards are set by the federal Election Assistance Commission (EAC) which itself is still working to develop them.
- SBE states that in terms of HAVA compliance for voting system accessibility, SBE has met requirements. Interestingly, it achieved compliance by having one voting machine in each precinct appropriately available to persons with disabilities prior to January 1, 2006. If it had not

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met this deadline, then every machine would have needed to be appropriately modified by January 2007.

However, access obviously involves not simply the ability to use the new voting machines but also physical access to the polling places. And as noted in **Exhibit 1**, SBE's work in this area is ongoing. SBE notes the difficulty in correcting all of the non-accessible issues, for example, because:

- many polling places are privately-owned buildings;
- many polling places are schools that have different accessibility standards than other buildings; and
- many require permanent structural changes.

SBE can use federal HAVA funds to correct some of the problems (although as noted below, the claim on those dollars exceeds availability) and also have received a small (\$350,000) federal Department of Health and Human Services grant for the same purpose. SBE notes it has made many easy "quick" fixes at this point, and further improvements in voter accessibility are more complicated and costly.

Exhibit 1
State Board of Elections Key HAVA Requirements
and Implementation Deadlines

<u>Deadline</u>	<u>HAVA Requirement</u>	<u>Status</u>
January 2004	Provisional voting	Complete
	Voting information requirements	Complete
	Statewide Voter Registration List	Extension requested (1/2006)
	Computerized list maintenance	Extension requested (1/2006)
	Verification of voter registration information	Extension requested (1/2006)
	Mail voter registration	Complete
	Military/overseas voting	Complete
November 2004	Replacement of punchcard/lever machines	Complete
January 2006	Voting system standards	In progress
	Alternative language accessibility	Complete
	Vote standardization	Complete
January 2007	Voting system accessibility	Complete
Ongoing	Voter education and outreach	
	Training for election officials and judges	
	Voter accessibility improvement	

Source: Department of Legislative Services; State Board of Elections

Ultimately, the performance of SBE is most visibly judged at elections. In calendar 2004, SBE oversaw statewide primary and general elections. There is still no universal agreement about the performance of the new voting system. While Maryland certainly did not experience problems with new machines to the extent reported in other states (principally Ohio), there remains amongst certain groups and individuals concern with the reliability of the new voting system. This is evidenced by bills already introduced in the 2005 session to make system changes.

Another source for an assessment of voting system performance and SBE's oversight of that system is the "Lessons Learned" assessment compiled by Accenture for SBE after the Primary Election in March 2004. That assessment was based on post-election meetings with local election officials and included lessons in six broad categories. As shown in **Exhibit 2**, the largest category of concern in terms of the number of items related to technical aspects of election operations (46 items) followed by communications (28 items). Non-technical aspects of election operations registered the fewest items (17). Examples of lessons in each category include:

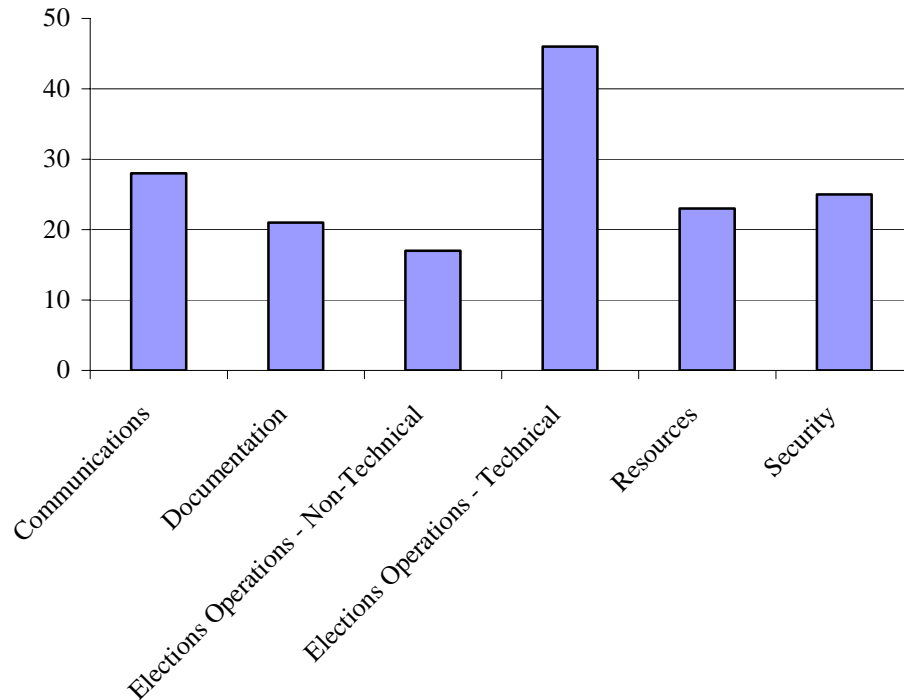
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- **Communications.** Issues included vendor management, the availability of current information, defining points of contact for decision-making, clarifying the role of Election Judges, and the need to improve training.
- **Documentation.** Issues included the layout of the Election Judges Manual, the timely availability of the manual, and document quality generally.
- **Election Operations – Non-Technical.** Issues included the delivery and pick-up of voting machines to local polling places and the need for a statewide inventory of voting machines.
- **Election Operations – Technical.** Issues included testing and verification of voting machines, ensuring timely software upgrades, concerns with the SBE’s main server, the use of key cards, modem failures, and appropriately identifying machine failures (it was estimated that 3% of machines had failures whereas in reality many were mistakenly shut down).
- **Resources.** Issues included the need for additional resources for appropriate machine maintenance, the definition of roles and responsibilities between county and Diebold technicians, the need for additional technical judges, and the increasing difficulty of recruiting election judges.
- **Voting System Security.** Issues included appropriate identification for SBE contractors, security around the delivery and pick up of voting machines, and the minimum security requirements for voting machines.

For each lesson, in each category, SBE detailed an action response. Additionally, a strategic priorities list was conducted for the November 2004 election. A similar lessons learned exercise was conducted for that election, and results are anticipated shortly.

Finally, in terms of administrative performance, the Department of Legislative Services (DLS) would note that in the most recent SBE audit, of the five findings, four were repeat findings (although the SBE disagreed with one of the repeat findings). More detail on that audit is provided in **Appendix 2**.

Exhibit 2
“Lessons Learned” from the March 2004 Primary Election



Source: State Board of Elections

Governor's Proposed Budget

As shown in **Exhibit 3**, the Governor's fiscal 2006 allowance is \$453,000 below the fiscal 2005 working appropriation, 1.9%. This reduction includes a \$16,000 reduction contingent on budget reconciliation legislation to remove the employee deferred compensation match.

Exhibit 3
Governor's Proposed Budget
State Board of Elections
(\$ in Thousands)

How Much It Grows:	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
2005 Working Appropriation	\$5,297	\$5,667	\$13,104	\$24,068
2006 Governor's Allowance	4,929	7,707	10,996	23,632
Contingent & Back of Bill Reductions	<u>-15</u>	<u>0</u>	<u>-2</u>	<u>-16</u>
Adjusted Allowance	4,914	7,707	10,995	23,616
Amount Change	-\$383	\$2,040	-\$2,110	-\$453
Percent Change	-7.2%	36.0%	-16.1%	-1.9%
Where It Goes:				
General Administration				-\$383
DBM Telecommunication charges.....				\$60
Other				6
Regular and contractual personnel costs				6
Printing costs				-50
Contract for ballot filing system maintenance				-76
End of capital lease payments for soon-to-be-replaced voter registration system				-329
HAVA				\$-4,570
Various contractual assistance for security, program management support, and independent verification and validation of system upgrades				1,676
Regular and contractual personnel costs				143
Other				14
Capital lease payments				-1,337
Contractual operation and maintenance of new voting systems				-5,066
Major Information Technology Development Projects				\$4,500
Statewide voter registration system.....				4,500
Total				-\$453

Note: Numbers may not sum to total due to rounding.

SBE General Administration

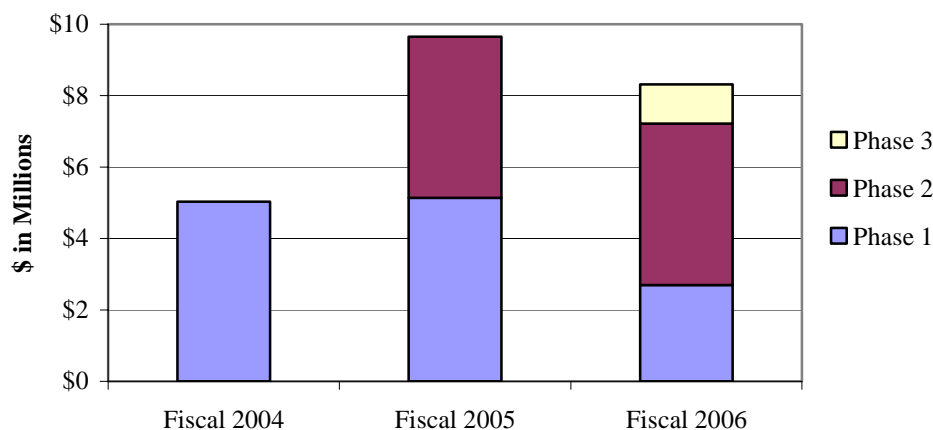
Overall, general fund support, all of which is for general administration, falls \$383,000, 7.2%. However, all of this reduction relates to such expenditures as anticipated contract reductions and expiring capital lease payments. Thus, the reduction should have little impact on SBE's operations.

HAVA

For the HAVA program there are three key changes:

- Capital lease payments through the Office of the State Treasurer fall by \$1.337 million. The State entered into a contract in December 2001 (with subsequent modifications) with Diebold Election Systems, Inc. for voting machines and ancillary services. The voting machines were purchased via lease agreements through the State Treasurer. As shown in **Exhibit 4**, the decline in fiscal 2006 reflects a reduction in payments associated with voting machines for the Phase 1 counties (Allegany, Dorchester, Montgomery and Prince George's) with final payments in fiscal 2006, level payments for Phase 2 counties (all other jurisdictions except Baltimore City), and the addition of \$1.1 million for Baltimore City (Phase 3). At this point, the \$1.1 million is a placeholder. Statutorily, Baltimore City's voting system must be consistent with the rest of the State by July 1, 2006. However, at this time, no amendment has been made to the existing contract for Phase 3 implementation.
- Diebold contract expenditures related to operations and maintenance of the new voting systems falls by just over \$5 million in fiscal 2006 from the fiscal 2005 working appropriation. While the original Diebold contract called for a more modest drop from fiscal 2005 to 2006, the fiscal 2005 appropriation was inflated by anticipated fiscal 2004 expenditures being pushed into fiscal 2005 as well as contractual changes for additional work leading up to the 2004 General Election. The fiscal 2006 allowance includes just under \$3.1 million for operations and maintenance under the contract. Of this, just under \$2.4 million is for Phase 1 and 2 counties, with another placeholder, \$700,000 for Phase 3.
- There is an almost \$1.7 million increase in other contractual assistance. This relates to a variety of contracts to ensure security, program management support, and independent verification and validation of system upgrades. This increase is deceptive as SBE anticipates adding substantial contractual assistance expenditures to its fiscal 2005 working appropriation through budget amendments.

Exhibit 4
HAVA Program. Changes in Capital Lease Payments
Fiscal 2004 – 2006



Source: Department of Legislative Services; State Board of Elections

Statewide Voter Registration System

The largest increase in the budget (\$4.5 million) is for the development of a Statewide Voter Registration System. As noted in Exhibit 1, there are a number of federal HAVA requirements concerning voter registration. SBE has interpreted compliance with those federal HAVA requirements to mean the development of a single, centralized, statewide database managed by SBE. This system will replace the multiple voter registration systems currently in place:

- SBE’s current voter registration system used by 19 local board of elections and managing 40% of the registered voter population; and
- five locally developed and maintained mainframe systems utilized by five local election boards and managing 60% of the registered voter population.

This database will be accessed on a real-time, interactive basis through secured network access by authorized local election officials who will continue to be responsible for voter registration and local election management activities. SBE issued a Request for Proposals on November 16, 2004, with a closing date for responses of December 21, 2004. SBE hopes to award a contract for the development of the voter registration system by March or April.

At this time the actual cost of the system is not known, and the proposed appropriation is simply a placeholder. Another outstanding question is exactly how project development will be funded. The fiscal 2006 allowance provides for a funding split of two-thirds for the State (utilizing available federal HAVA funds) and one-third in special funds that will be received by billing local

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jurisdictions. However, according to SBE, it has no formal agreement in place with the local jurisdictions. Nor is it clear what the respective responsibilities of the State and local jurisdictions will be for the operation and maintenance of the system.

According to SBE, the development and implementation of the current voter registration system used by 19 local jurisdictions was paid for by the State with the local jurisdictions primarily responsible for operations and maintenance (although these expenditures are not reflected in SBE's budget). **Given the number of outstanding questions concerning the voter registration system, the Department of Legislative Services recommends withholding \$100,000 in general funds pending the submission by SBE of a report detailing project costs, timelines, and who will be responsible for project development, operations, and maintenance costs.**

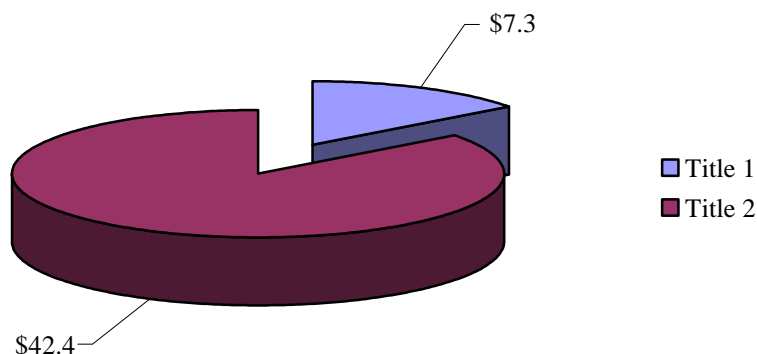
Issues

1. Federal HAVA Funds, Funding Responsibilities, and Cost Estimates: The State of Play

During the 2004 session, discussion surrounding SBE’s budget was primarily concerned with how much federal HAVA funding the State would be receiving and when it would be receiving it. Corollary to this was ensuring that the State could meet maintenance of effort and matching requirements that had to be satisfied to claim the bulk of federal HAVA funds.

As shown in **Exhibit 5**, to date the State has received just over \$49.7 million in federal HAVA funds, and they have been deposited in the Maryland Election Modernization Fund pursuant to Chapter 197, Acts of 2003. These funds included just under \$7.3 million of Title I funds (for improvements in election administration and the replacement of punch-card or lever voting machines) and just under \$42.5 million in Title 2 funds to implement the key requirements of HAVA such as voting systems, provisional voting and voter information, and voter registration. Title I funds were made available to states on a formula basis. Title II funds were also awarded on a formula basis but contained various matching and maintenance of effort requirements.

Exhibit 5
Received Federal HAVA Funds
(\$ in Millions)



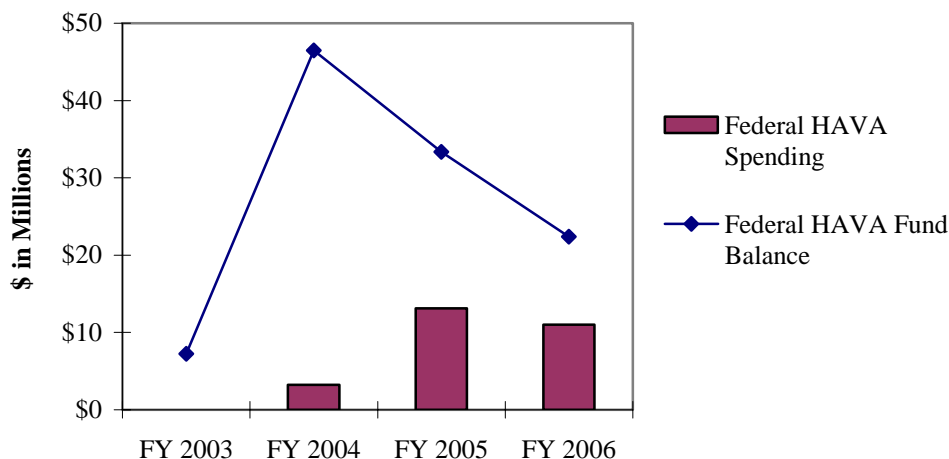
Source: State Board of Elections

While the State had anticipated receiving some small amount of additional federal HAVA funds in federal fiscal 2005 (\$728,000), the latest indications are that no additional funding will be forthcoming.

What Are the Current and Future Claims on Those Federal HAVA Funds?

Exhibit 6 describes the historical use of federal HAVA funds up to and including the fiscal 2006 allowance and the resulting fund balance. As shown in the exhibit, the Governor’s current fiscal 2005 and 2006 spending plan utilizes just over \$24 million in federal HAVA funds. Consequently, the federal HAVA fund balance has fallen quickly. It should also be noted that DLS fully expects additional requests through budget amendments to utilize federal HAVA funds in fiscal 2005, perhaps as much as another \$1 million.

Exhibit 6
Utilization of Federal HAVA Funds
HAVA Fund Balance
Fiscal 2003 to 2006



Source: Department of Legislative Services; State Board of Elections

In terms of the total expenditures anticipated for the development and operation of the new voting system and other requirements set forth under HAVA, DLS noted in last year’s budget analysis that the total cost for implementation of the State plan developed by SBE in order to be compliant with HAVA had risen to between \$98.2 million and \$104.2 million from SBE’s estimate of \$70 to \$79 million. The DLS estimate was based on the following:

- \$81.2 million in lease payments for voting machines and maintenance services for Phase I and II counties (that is, all jurisdictions except Baltimore City). These lease payments cover contracts for Phase I hardware that are scheduled to be fully paid off by fiscal 2006, Phase I and II maintenance agreements that are in place through the middle of fiscal 2009, and Phase II hardware contracts that are scheduled to be paid off by fiscal 2014.
- \$2 million in other approved HAVA-related spending (primarily program management contracts and security-related work).

Analysis of the FY 2006 Maryland Executive Budget, 2005

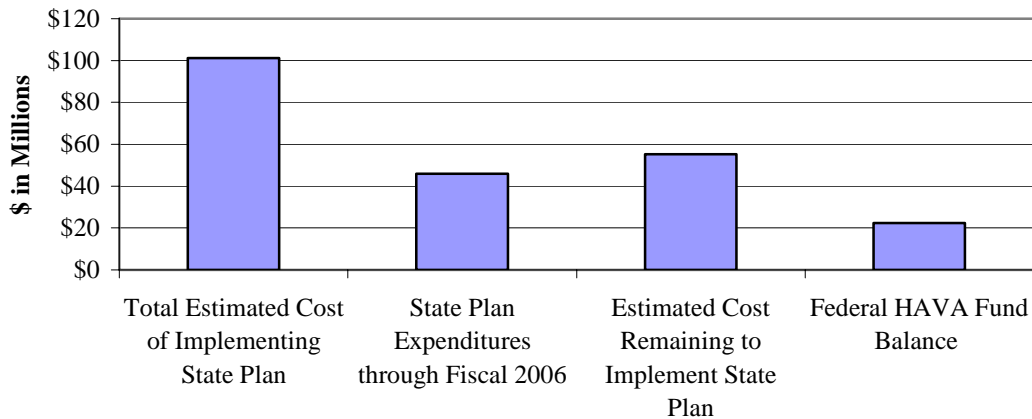
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- \$15 to \$21 million in expenditures anticipated by the State plan but not yet finalized including at least \$7.2 million for hardware and maintenance/services for Phase 3 (Baltimore City), a statewide voter registration database (estimated at \$6 to 12 million), and additional administrative expenditures (\$2 million).
- No estimate was included for the more extensive and permanent administrative structure that will be required by the new voting system or maintenance and service agreements that presumably will have to be entered into in fiscal 2009 when the current agreements cease.
- No estimate was included for the possible changes/additions to the current voting system such as requiring voter verified receipts.

At this time, although placeholders are included in the fiscal 2006 allowance for the two major unknown future costs (Phase III hardware and operations/maintenance, and the Statewide Voter Registration System), there is no data to reasonably change the previous DLS estimate with the regard to those costs. However, the significant level of contractual assistance provided for in fiscal 2006 seems to further underscore that program management and other consulting will be a significant ongoing cost.

As shown in **Exhibit 7**, based on the fiscal 2006 allowance, Maryland is slightly less than half-way (45%) in terms of expenditures on State Plan implementation. However, the State has spent 55% of its received federal HAVA funds.

Exhibit 7
Implementing Maryland’s State Plan for HAVA Compliance



Source: Department of Legislative Services; State Board of Elections; Department of Budget and Management

November 17, 2004, Attorney General Advice of Counsel Letter Re-defines Funding Responsibility for Voting System Expenditures

An uncodified section of Chapter 564, Acts of 2001 that mandated a statewide uniform voting system, defined the funding responsibility for the new voting system. Specifically, Section 4 provided that:

“Subject to Section 5 of this Act, each county shall pay its share of one-half of the State’s cost of acquiring and operating the uniform statewide voting systems for voting in polling places and for absentee voting provided for under this Act, including the cost of maintenance, storage, printing of ballots, technical support and programming, related supplies and materials and software licensing fees. A county’s share of the cost of acquiring and operating the uniform statewide voting systems shall be based upon the county’s voting age population.”

SBE has interpreted this section so that it applies only to the Diebold contract. DLS requested advice from the Attorney General’s office as to the interpretation of Section 4.

The subsequent advice of counsel letter concluded that the shared funding responsibility went beyond the Diebold contract. Indeed, since SBE has developed a new budget program specifically related to the implementation of the new voting system (the bulk of which relates to the Diebold contract but also includes additional contractual assistance as well as personnel and rent costs), it is reasonable to conclude that all of these expenditures are subject to a shared funding responsibility. As the advice notes:

“...inclusion of the list of specific activities in Section 4 was not intended to limit cost sharing just to those activities listed, but rather to any costs associated with operating the new system.”

The Attorney General’s November letter re-shapes the funding responsibilities of the State and local jurisdictions. Given that letter, the question remains how long the State can expect to continue to have federal HAVA funds available to it?

Section 6 of Chapter 564, Acts of 2001 was another uncodified section that established how federal HAVA funds were to be shared. Specifically:

“That fifty percent of any federal funds received for improvements in voting systems and equipment shall be distributed to the State and fifty percent of any federal funds received for improvements in voting systems and equipment shall be distributed, on the basis of a county’s voting age population, to the counties that have implemented the uniform statewide voting system provided for under this Act in the fiscal year in which the funds are received.”

SBE has interpreted this section to mean that half of the funds received for voting systems and equipment **as allocated in the State Plan** is split between the State and counties (Baltimore City, which has yet to implement the uniform statewide voting system, will not receive federal funds).

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According to SBE, that allocation is \$30.25 million (with the counties receiving 50%) even though the actual cost of the voting systems and equipment is much higher. For example, lease payments for hardware costs for Phase I and II alone will exceed \$53 million. Thus, of the just over \$49.7 million federal HAVA funds received, \$34.6 million is available for the State share of voting system costs, and \$15.1 million is available to the counties.

Further, it should also be noted that SBE does not intend to actually distribute the funds to the counties. Rather SBE intends to hold those funds in the Maryland Election Modernization Fund on behalf of the counties.

With all voting system costs to be split between the State and local jurisdictions, **Exhibit 8** illustrates how current and proposed expenditures have been shared and the different fund sources for that cost-sharing. With a 50:50 split of costs, and collapsing the cost-share requirements for fiscal 2003 into fiscal 2004 because spending in that year was somewhat skewed, Exhibit 8 reveals that the State has utilized almost \$17 million of its share of the federal HAVA on the voting system, with the counties spending almost \$5.4 million.

Exhibit 8
Funding of the Statewide Voting System
Fiscal 2003 to 2006

	<u>Fiscal 2003</u>	<u>Fiscal 2004</u>	<u>Fiscal 2005</u>	<u>Fiscal 2006</u>
General Fund	\$0	\$1,219,570	\$1,129,726	\$1,130,000
Special Funds (Local Contributions)	1,447,297	2,732,759	5,167,482	5,707,381
Federal Funds	13,020	3,246,049	12,104,107	6,996,115
Total	\$1,460,317	\$7,198,378	\$18,401,315	\$13,833,496
<i>Federal Funds State Share</i>		<i>3,109,778</i>	<i>8,070,932</i>	<i>5,786,748</i>
<i>Federal Funds Local Share</i>		<i>149,292</i>	<i>4,033,176</i>	<i>1,209,367</i>

Note: For purposes of this discussion, the calculation of federal fund allocation combines fiscal 2003 and fiscal 2004

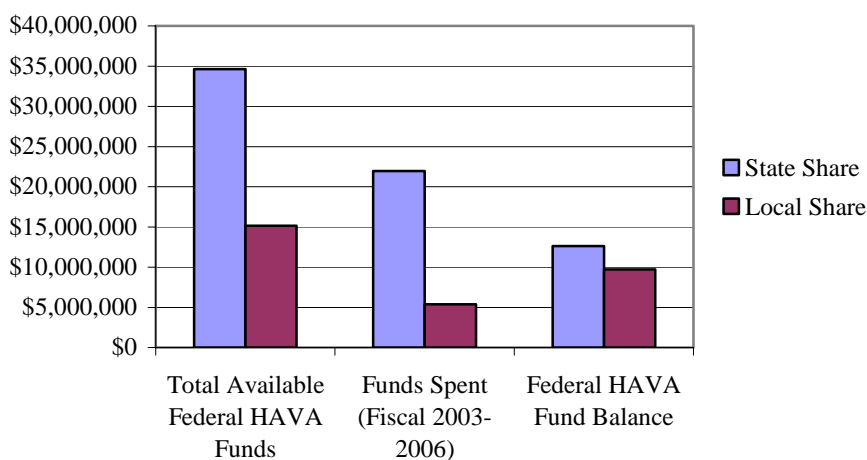
Source: Department of Legislative Services; State Board of Elections; Department of Budget and Management

Clearly, the State has been spending-down its share of the federal funds at a faster pace than the counties. This pattern is consistent with traditional budget bill law that requires that an expenditure or encumbrance that can be charged to federal funds or general funds be charged to federal funds.

Further, as shown in **Exhibit 9**, when the proposed expenditures on the statewide voter registration system are also subtracted from the State share of federal HAVA funds, the State retains a

slightly less than \$13 million fund balance. Given that the State intends to spend almost \$10 million of its share of federal HAVA dollars in fiscal 2006, at this point it appears safe to assume that significant additional general fund support will be required by fiscal 2008. For the counties, given the significant levels of special fund payments they already make, the share of federal HAVA funds reserved for them will obviate the need for any sharp increases in payments at least as related to the voting system.

**Exhibit 9
Federal HAVA Funds
Various Data**



Source: Department of Legislative Services; State Board of Elections; Department of Budget and Management

However, consistent with the traditional budget bill law concerning the charging of expenditures to available federal funds rather than general funds, **DLS recommends reducing the \$1.13 million in general funds included in the fiscal 2006 allowance related to the implementation of the voting system.**

Two final points should be raised:

- As currently constituted, while it is possible to calculate the spend-down of the respective share of federal HAVA funds attributed to the State and to the counties, that distinction is not made in the Maryland Election Modernization Fund itself. **DLS recommends that in the Maryland Election Modernization Fund, SBE distinguish between the federal HAVA funds that are available to the State and the funds available to the counties.**
- If a different interpretation of the statute regarding the distribution of federal HAVA funds is applied, for example, that since the overall cost of actually implementing the State Plan has increased and the cost of voting systems and equipment is actually much higher than that

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allocated in the State Plan, the federal fund split between the State and counties could be much less advantageous to the State. Indeed, a straight 50:50 split of the federal HAVA funds would leave the State with less than \$3 million available for future expenses and require significant general fund support for fiscal 2007.

2. The Security of the Statewide Voting System

Concern about the security of the electronic voting machines prior to the primary and general elections of 2004 focused attention on Maryland's new statewide voting system. Maryland's voting machines were subjected to two specific reviews: one instigated by the Governor in August 2003 and performed by Science Applications International Corporation (SAIC); and the second instigated by the legislature in November 2003 and performed under contract to DLS by RABA Technologies, Inc. (RABA).

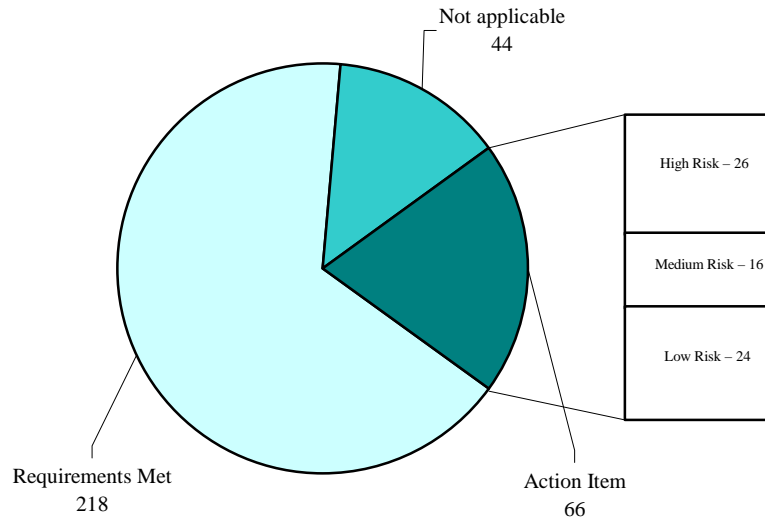
SAIC Review

SAIC reviewed compliance with 328 requirements for voting system security. These requirements included:

- management controls to protect information systems and manage risk;
- operational controls or protection mechanisms primarily planned, implemented, and monitored by people;
- technical controls which are system or electronically-based and rely on operational and management controls in addition to system-based restrictions.

As shown in **Exhibit 10**, of the 328 identified requirements, 218 were met with existing procedures and technical features, 44 were not deemed applicable to the specific system used by SBE, and 66 action items were identified, 26 of which were deemed high risk. SBE subsequently condensed these 66 action items into 23 tasks as well as integrating all security measures into an Information System Security Plan (ISSP) that is based on accepted security principles and meets DBM's Information Technology Security Policy and Standards. SBE reported the completion of all 23 tasks by March 31, 2004, and the development of a formal ISSP by June 30, 2004. In its 2006 MFR submission, SBE notes that an estimated 59% of the recommendations in the ISSP will be implemented in fiscal 2005, with all implemented by fiscal 2006.

Exhibit 10
SAIC Identification of Requirements for Voting System Security



Source: Department of Legislative Services; State Board of Elections

RABA Technologies Review

The RABA review made 15 recommendations in three broad areas:

- Smart card security (3 recommendations);
- Voting machine security (3 recommendations); and
- Security of the Global Elections Management Server [GEMS] (9 recommendations).

In a December 1, 2004 report to the legislature, SBE detailed compliance with all 15 recommendations made by RABA.

However, DLS would point out that the RABA recommendations were essentially interim steps to be taken by SBE to protect the integrity of the 2004 elections. Importantly, RABA also made the finding that:

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“It is our opinion that the current DIEBOLD software reflects a layered approach to security: as objections are raised additional layers are added. True security can only come via established security models, trust models, and software engineering processes that follow these models; we feel that a pervasive code rewrite would be necessary to instantiate the level of best practice security necessary to eliminate the risks we have outlined in the previous sections.”

At this point, DLS understands SBE has not asked Diebold for such a software rewrite, and it is not clear if they intend to. **SBE should brief the committees as to if they intend to ask for such a rewrite as recommended by the RABA report, and if not, why not.**

Recommended Actions

1. Add the following language:

. provided that \$100,000 of this appropriation may not be expended until the State Board of Elections submits a report to the budget committees detailing project costs, timelines, and funding responsibility related to the development, operation, and maintenance of a proposed statewide voter registration system. The budget committees shall have 45 days from the receipt of the report for review and comment.

Explanation: The State Board of Elections (SBE) has issued a Request for Proposals (RFP) for the development of a new statewide voter registration system. The fiscal 2006 allowance includes \$6 million as a placeholder for the project. At this time, SBE is still considering responses to the RFP. The language withholds funds until SBE provides the budget committees with details as to the project costs, timelines, and funding responsibility related to the development, operation, and maintenance of a proposed statewide voter registration system.

Information Request	Author	Due Date
Statewide voter registration system	SBE	45 days prior to expenditure of funds

	<u>Amount Reduction</u>	
2. Reduce funds for contractual support. The State Board of Elections has vacant positions that it could fill to perform tasks currently undertaken by contractual staff.	\$ 24,000	GF
3. Reduce general funds based on the availability of federal funds. The State Board of Elections may use available federal Help America Vote Act funds to offset this general fund reduction.	1,130,000	GF
Total General Fund Reductions	\$ 1,154,000	

Updates

1. Late Filing Fees

Chapter 429, Acts of 2004 (the fiscal 2005 budget bill) included language added by the legislature withholding \$200,000 of SBE's general fund appropriation pending the submission of a report detailing all uncollected late filing fees assessed for failure to file a campaign finance report. The language acknowledged that under current law SBE has little recourse to collect such fees and requested SBE to develop a corrective action plan to ensure late filing fees that are currently owed as well as any that are imposed in the future can be collected in a timely manner.

SBE submitted that report to the legislature in January 2005. As shown in **Exhibit 11**, the total amount of uncollected late filing fees owed to SBE and other local election boards as of November 30, 2004, was \$273,340. Of this amount, the bulk (52%) was owed to SBE, with the remainder owed to various local election boards. Of the amount owed to local election boards, one-third was owed to just one board – Prince George's County.

Exhibit 11
Late Fees Owed by Maryland Campaign Finance Entities
As of November 30, 2004

<u>Jurisdiction to Which Fees Are Owed</u>	<u>Amount Owed (\$)</u>
SBE	\$143,050
Prince George's County	43,840
Frederick	14,830
Baltimore City	14,090
Montgomery	10,350
Other*	47,180
Total	\$273,340

*No other jurisdiction was owed more than \$10,000 (ranging from \$250 in Charles County to \$9,560 in Talbot County).

Source: Department of Legislative Services; State Board of Elections.

In order to reduce the extent of late filing fees, SBE proposed numerous solutions:

- Reducing the confusion and complexity of the current campaign finance reporting system. Currently, a continuing campaign committee is presumed to be participating in every election (Baltimore City, Presidential and Gubernatorial) which requires the filing of a report associated with each election or the filing of an Affidavit of Non Participation. Removing the presumption

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by requiring a continuing committee to identify in which election they intend to participate would eliminate the potential for missed filings.

- Mandating a training seminar for all new campaign treasurers.
- Eliminating non-continuing committees so that all campaign committees fall under the jurisdiction of SBE thus facilitating more uniform oversight and enforcement.
- Requiring candidates to be jointly and severally liable for the activity of their designated committee.
- Providing an alternative to the current law that allows SBE to refer enforcement over late filing fees only to the State Prosecutor. For example, the Central Collection Unit is an option used by most State agencies for delinquent accounts.
- Amending the statute to limit the incidence of fraud on documents submitted to SBE.

While SBE's response was fulsome in terms of recommendations, it does not currently have any plans to submit a legislative package to address these issues. According to SBE, it traditionally does not submit legislation to create or alter campaign finance policy (technical changes excepted).

Nevertheless, the report submitted by SBE complies with the budget bill language added by the legislature. **Thus, DLS recommends releasing funds being withheld from SBE pending the submission of the report. DLS will communicate this recommendation to the budget committee chairs pending any discussion in the budget hearings.**

Current and Prior Year Budgets

Current and Prior Year Budgets State Board of Elections (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2004					
Legislative Appropriation	\$7,035	\$2,437	\$0	\$0	\$9,472
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	710	3,246	0	3,956
Cost Containment	-1,972	0	0	0	-1,972
Reversions and Cancellations	0	-414	0	0	-414
Actual Expenditures	\$5,064	\$2,733	\$3,246	\$0	\$11,043
Fiscal 2005					
Legislative Appropriation	\$5,272	\$2,285	\$8,270	\$0	\$15,827
Budget Amendments	25	3,382	4,834	0	8,241
Working Appropriation	\$5,297	\$5,667	\$13,104	\$0	\$24,068

Note: Numbers may not sum to total due to rounding.

Fiscal 2004

The fiscal 2004 legislative appropriation for SBE was increased by \$1.571 million. This increase was derived as follows:

- A general fund reduction of just over \$1.97 million consisting of cost containment actions. Specifically, \$124,000 in general funds for general administration was reduced by the Board of Public Works in July 2003. SBE was able to encumber funds from two fiscal 2003 information technology contracts where expenditures were lower than anticipated to offset this reduction. A

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further \$1.85 million was cut in Chapter 430, Acts of 2004, the Budget and Reconciliation Financing Act, because of the availability of federal HAVA dollars.

- The general fund reduction was more than offset by special fund budget amendments of almost \$710,000 representing the local government contribution of costs associated with the statewide voting system, and just over \$3.2 million in federal fund budget amendments utilizing HAVA funds to support the same system.

Fiscal 2005

To date, the fiscal 2005 legislative appropriation has been increased by \$8.24 million. This increase is comprised of:

- A general fund increase of \$25,000 representing the SBE share of the fiscal 2005 cost-of-living-adjustment (COLA) originally budgeted in DBM.
- Special fund amendments of almost \$3.4 million and federal fund amendments of just over \$4.8 million. Of this, just over \$6.6 million are expenses related to the operation of the new voting system. Specifically, \$2.6 million in both special and federal funds were to cover Diebold invoices dating from fiscal 2004, \$332,000 in both special and federal funds to fund security upgrades for voting machines, \$670,000 in federal funds to backfill a legislative reduction to the fiscal 2005 general fund budget for voting machine lease payments, and \$83,000 in federal funds for rent expenses.

A further \$500,000 in special funds and \$1 million in federal funds are included in the working appropriation for the development of a Statewide Voter Registration System. At the time of this writing, the Department of Budget and Management had not submitted a budget amendment to request that these funds be added to the fiscal 2005 appropriation. As such, it is inappropriate for them to be reflected in the budget submission.

Audit Findings

Audit Period for Last Audit:	July 1, 2000 – April 16, 2003
Issue Date:	March 16, 2004
Number of Findings:	5
Number of Repeat Findings:	4
% of Repeat Findings:	80%
Rating: (if applicable)	n/a

Finding 1: **SBE did not sufficiently assess each local board of election’s compliance with election laws and regulations. This was a repeat finding. The administrator disagreed with this finding, specifically noting strengthened oversight in the areas of voter registration, candidacy and campaign finance, ballot preparation, voting systems and polling place procedures, and compliance audit analysis review and follow-up.**

Finding 2: **SBE’s internal networks were not adequately secured from external threats. The Administrator concurred with this finding and recommendation.**

Finding 3: **Controls over the processing of non-cash adjustments were inadequate. This was a repeat finding. The administrator concurred with this finding and recommendation.**

Finding 4: **A control account was not maintained on a current basis and reconciled with the related records. This was a repeat finding. The administrator concurred with this finding and recommendation.**

Finding 5: **Duties were not adequately separated over certain payroll processing functions. This was a repeat finding. The administrator concurred with this finding and recommendation.**

*Bold denotes item repeated in full or part from preceding audit report.

**Object/Fund Difference Report
State Board of Elections**

<u>Object/Fund</u>	<u>FY04 Actual</u>	<u>FY05 Working Appropriation</u>	<u>FY06 Allowance</u>	<u>FY05 - FY06 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	32.50	32.50	32.50	0	0%
02 Contractual	11.00	9.00	9.00	0	0%
Total Positions	43.50	41.50	41.50	0	0%
Objects					
01 Salaries and Wages	\$ 1,732,467	\$ 1,742,350	\$ 1,965,203	\$ 222,853	12.8%
02 Technical & Spec Fees	265,777	416,884	359,727	-57,157	-13.7%
03 Communication	298,612	338,542	379,766	41,224	12.2%
04 Travel	24,835	18,000	18,000	0	0%
07 Motor Vehicles	13,611	2,291	2,580	289	12.6%
08 Contractual Services	2,365,394	2,989,193	9,077,141	6,087,948	203.7%
09 Supplies & Materials	51,221	23,478	25,451	1,973	8.4%
10 Equip - Replacement	343,227	334,084	42,500	-291,584	-87.3%
11 Equip - Additional	4,877,277	9,654,582	8,317,294	-1,337,288	-13.9%
12 Grants,Subsidies,Contr	835,614	8,188,257	3,082,468	-5,105,789	-62.4%
13 Fixed Charges	234,887	360,808	361,999	1,191	0.3%
Total Objects	\$ 11,042,922	\$ 24,068,469	\$ 23,632,129	-\$ 436,340	-1.8%
Funds					
01 General Fund	\$ 5,064,114	\$ 5,296,880	\$ 4,928,633	-\$ 368,247	-7.0%
03 Special Fund	2,732,759	5,667,482	7,707,381	2,039,899	36.0%
05 Federal Fund	3,246,049	13,104,107	10,996,115	-2,107,992	-16.1%
Total Funds	\$ 11,042,922	\$ 24,068,469	\$ 23,632,129	-\$ 436,340	-1.8%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

**Fiscal Summary
State Board of Elections**

<u>Program/Unit</u>	<u>FY04 Actual</u>	<u>FY05 Wrk Approp</u>	<u>FY06 Allowance</u>	<u>Change</u>	<u>FY05 - FY06 % Change</u>
01 General Administration	\$ 3,844,544	\$ 4,167,154	\$ 3,798,633	-\$ 368,521	-8.8%
02 Federal Help America Vote Act Funding	7,198,378	18,401,315	13,833,496	-4,567,819	-24.8%
03 Major IT Projects	0	1,500,000	6,000,000	4,500,000	300.0%
Total Expenditures	\$ 11,042,922	\$ 24,068,469	\$ 23,632,129	-\$ 436,340	-1.8%
General Fund	\$ 5,064,114	\$ 5,296,880	\$ 4,928,633	-\$ 368,247	-7.0%
Special Fund	2,732,759	5,667,482	7,707,381	2,039,899	36.0%
Federal Fund	3,246,049	13,104,107	10,996,115	-2,107,992	-16.1%
Total Appropriations	\$ 11,042,922	\$ 24,068,469	\$ 23,632,129	-\$ 436,340	-1.8%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

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Fiscal 2006 Cost Containment Actions
As Submitted by the Agency
Estimated Fiscal 2006 Savings
Compared to Fiscal 2005

<u>Describe Each Cost Saving Action/Efficiency Measure</u>	<u>Program Code</u>	<u>Sub- Program Code</u>	<u>Total Funds</u>	<u>General Funds</u>	<u>Impact of Action</u>
Reduction of Overtime	01	0104	2,905	2,905	Less overtime will be warranted in non-election year.
Training and Staff Development	01	0208	2,138	2,138	Our IT staff especially will not be able to attend training to keep up with changes
Other Technical and Special Fees	01	0299	7,500	7,500	We are hoping that these outlays will be diminished in a non-election year; largely we use these funds as needed for our court cases, paper trail hearings, etc.
Postage	01	0301	20,000	20,000	Hopefully the need is reduced in a non-election year.
Misc. Communications	01	0304	1,204	1,204	Replaced with networkMD
Advertising and Legal Publications	01	0801	4,000	4,000	Should be less in non-election year;
Printing/Reproduction	01	0804	50,000	50,000	Based on non-election year numbers, and preparation for the 2006 primary election
Computer Maintenance Contracts	01	0854	6,200	6,200	Cost containment – no maintenance
Applications Software Maintenance	01	0862	76,440	76,440	Fewer contractual obligations
Capital Lease – Payments	01	1041	329,084	329,084	Last lease payment is in fiscal 2005; new voter registration will have its own costs
Aid to Political Subdivisions	01	1202	39,355	39,355	Provisional Judge reimbursement – none in fiscal 2006