

D38I01
State Board of Elections

Operating Budget Data

(\$ in Thousands)

	<u>FY 08</u> <u>Actual</u>	<u>FY 09</u> <u>Working</u>	<u>FY 10</u> <u>Allowance</u>	<u>FY 09-10</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$13,899	\$15,252	\$9,468	-\$5,784	-37.9%
Contingent & Back of Bill Reductions	0	0	-242	-242	
Adjusted General Fund	\$13,899	\$15,252	\$9,226	-\$6,026	-39.5%
Special Fund	8,703	9,198	3,840	-5,358	-58.3%
Adjusted Special Fund	\$8,703	\$9,198	\$3,840	-\$5,358	-58.3%
Federal Fund	1,836	2,636	8,800	6,164	233.8%
Adjusted Federal Fund	\$1,836	\$2,636	\$8,800	\$6,164	233.8%
Adjusted Grand Total	\$24,438	\$27,086	\$21,865	-\$5,221	-19.3%

- The fiscal 2010 allowance for the State Board of Elections (SBE) decreases by approximately \$5.2 million, or 19.3%, after accounting for contingent reductions associated with deferred compensation and those associated with Sections 18, 23, and 24 of the budget bill. The general fund appropriation decreases by approximately \$6.0 million, or 39.5%. The special fund appropriation decreases by approximately \$5.4 million, or 58.3%. These decreases are partially offset by an increase in the federal fund appropriation of approximately \$6.2 million, or 233.8%.
- Contingent across-the-board reductions reduce 2 positions and \$91,167 in general funds as part of the abolition of 1,000 positions, \$22,362 in general funds to reduce contractual full-time equivalent payroll, \$13,035 in general funds to delete the deferred compensation match, and \$115,402 in general funds in the expectation of savings in contracted services based on a favorable bidding climate. Additional personnel reductions may occur in this agency as part of a statewide \$30.0 million unallocated across-the-board reduction.

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

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Personnel Data

	<u>FY 08</u> <u>Actual</u>	<u>FY 09</u> <u>Working</u>	<u>FY 10</u> <u>Allowance</u>	<u>FY 09-10</u> <u>Change</u>
Regular Positions	32.50	32.50	30.50	-2.00
Contractual FTEs	<u>5.00</u>	<u>2.50</u>	<u>2.50</u>	<u>0.00</u>
Total Personnel	37.50	35.00	35.00	0.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.98	3.00%
Positions and Percentage Vacant as of 12/31/08	3.00	9.23%

- Section 18 of the budget bill would eliminate 2.0 regular positions within SBE. In addition, Section 23 of the budget bill reduces the general funding for contractual full-time equivalent payroll of SBE by \$22,362.
- As of December 31, 2008, SBE had a vacancy rate of 9.23%, or 3.0 positions. It needs to keep 0.98 positions vacant to meet its fiscal 2010 turnover expectancy. Given the decrease in vacant positions included in Section 18 of the budget bill, at its current vacancy level, it may be difficult for SBE to meet its turnover expectancy in fiscal 2010.
- The turnover expectancy decreases from 4.3 to 3.0% in the fiscal 2010 allowance.

Analysis in Brief

Major Trends

SBE Preparations for the 2008 General Election: SBE took several actions to prepare for the 2008 general election. In anticipation of high voter registration and turnout levels, additional ePollbooks were purchased and voting machines rented. SBE also made changes to the policies regarding training for election judges.

Issues

Existing Voting System Actions in Fiscal 2009: In fiscal 2009, SBE took two significant actions related to the existing voting system – the awarding of a bridge contract for support services to Premier Election Systems, Inc. and the filing of a claim against Premier Election Systems, Inc. to recover costs associated with security improvements.

Procurement of a New Voting System: Chapters 547 and 548 of 2007 require the voting system in Maryland to include a voter-verifiable paper trail beginning with elections on or after January 1, 2010. The fiscal 2009 budget provided some funding to begin the process of replacing the State’s current voting system with a system which meets the requirements of these chapters. In January 2009, SBE released a request for proposal (RFP) to procure a new voting system. This RFP closes on March 5, 2009. Some concern exists about the ability of vendors to fully respond to this RFP. Legislation has been introduced which would alter the accessibility requirements provided in Chapter 547 and 548 of 2007 and potentially alleviate these concerns.

Report on Voter Registration: Committee narrative in the 2008 *Joint Chairmen’s Report* requested that SBE and the Motor Vehicle Administration (MVA) provide a plan on an integrated process of capturing and transferring voter registration information from MVA to the voter registration list. As of this writing, the report had not been submitted.

Recommended Actions

	<u>Funds</u>
1. Delete funding for software to improve election night reporting.	\$ 606,000
2. Adopt committee narrative requesting information on the purpose and cost of contracts.	
Total Reductions	\$ 606,000

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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 federal Help America Vote Act (HAVA). Under HAVA, State spending of federal HAVA funds is guided by a State Plan as submitted to the federal government.

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 board of elections (LBEs).

LBEs maintain voter registration records for the statewide voter registration database, establish election precincts and staff polling places, provide and process absentee and provisional ballots, and certify local election results.

The mission of SBE is to administer the process of holding democratic elections in a manner that inspires public confidence and trust. SBE's four key goals are:

- to implement a uniform statewide voter registration system that meets all of the requirements of HAVA and to use that system to improve the ability of qualified Maryland residents to keep their voter registration up-to-date and vote in the correct precinct;
- to provide voters with disabilities access to polling places and voting methods that allow them to vote independently;
- to ensure that LBEs are conducting elections pursuant to the requirements of federal and State election laws, State information technology security requirements, and State Board regulations, guidelines, and policies; and
- to ensure that campaign finance entities comply with the disclosure of the required campaign finance information in an accurate and timely fashion.

Performance Analysis: Managing for Results

The performance measures contained in the SBE Managing for Results (MFR) submission are tied to election year cycles rather than fiscal years (an election year cycle runs from December of the previous year through November of each general election). The fiscal 2010 MFR submission contains some new objectives and measures. These new measures are primarily related to campaign finance; other new measures include the percentage of voters using the audio ballot and the percent of

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LBEs achieving an acceptable report in audits. In addition to these new measures, the schedule of data has also been revised for some measures. In the fiscal 2010 MFR submission, data is only available for the gubernatorial and presidential election cycles. In the fiscal 2009 submission, some information was reported for the 2007 election year cycle as well. As a result of these changes, trend data is generally unavailable.

Ultimately, the performance of SBE is measured by how well the last election went. A formal analysis of the 2008 general election in November is still being developed. However, the performance of SBE during this election can begin to be analyzed through the preparations for this election.

SBE undertook several actions to prepare for the 2008 general election including actions related to regulations, customer service, and the rental and purchase of equipment.

In July 2008, SBE adopted emergency regulations that altered the training requirements for election judges. Prior to this regulation change, election directors were only required to prepare and conduct training classes before the primary election in a presidential or gubernatorial election year. The new regulations require election directors to prepare and conduct training classes for all election judges before the primary and general elections in a presidential election year, and before specified other elections. In addition, the regulations require training classes to be at least three hours long and include hands-on practice with technology to be used by election judges in a polling place.

SBE also planned to have its phone number routed to a call center on the day voter registration closed (October 14) and the day before and day of the November general election. Complex inquiries were planned to be routed back to SBE. SBE reports that the use of the call center was ultimately expanded to cover a longer time period, a total of 22 days, and to include some LBEs (Anne Arundel, Baltimore, and Prince George's counties, and Baltimore City). SBE reports that the call center answered 88,416 calls in total, with 11,248 calls answered on election day.

SBE rented additional voting machines and purchased additional ePollbooks in preparation for increases in registered voters. On August 6, 2008, the Board of Public Works (BPW) approved a purchase of 458 ePollbooks. SBE indicates that following the initial purchase Prince George's County directly purchased an additional 200 machines.

SBE indicates that a total of 1,191 voting units were rented for the 2008 general election at a cost of approximately \$245,550. No contract was approved by BPW for these rentals despite the requirement of COMAR 21.02.01.04, which requires all sole source procurements of over \$100,000 to be approved by BPW. SBE indicates that these rentals occurred over multiple dates, which led to this item not being taken to BPW. As of this writing, these dates have not been provided to the Department of Legislative Services (DLS). **SBE should comment on why the rental of the voting units was not taken to BPW as required.**

Exhibit 1 provides the final allocation of voting units and ePollbooks in the November 2008 general election. In total, SBE reports it deployed 20,001 voting units and 5,642 ePollbooks for this election. These figures are higher than the numbers reported in the State budget books.

Exhibit 1
Allocation of Voting Units and EPollbooks by Jurisdiction
November 2008 General Election

<u>Jurisdiction</u>	<u>Number of Registered Voters</u>	<u>Number of Voting Units</u>	<u>Registered Voters Per Voting Unit</u>	<u>Number of EPollbooks</u>	<u>Registered Voters Per EPollbook</u>
Allegany	42,170	249	169	80	527
Anne Arundel	329,437	1,842	179	491	671
Baltimore City	368,142	2,362	156	718	513
Baltimore County	502,324	2,808	179	705	713
Calvert	55,555	305	182	92	604
Caroline	17,596	109	161	29	607
Carroll	105,449	592	178	162	651
Cecil	58,934	310	190	75	786
Charles	87,731	470	187	126	696
Dorchester	19,351	139	139	70	276
Frederick	134,267	770	174	236	569
Garrett	18,102	128	141	38	476
Harford	149,651	878	170	244	613
Howard	175,115	1,021	172	286	612
Kent	12,760	88	145	20	638
Montgomery	557,673	3,191	175	811	688
Prince George's	497,421	2,893	172	936	531
Queen Anne's	29,334	185	159	51	575
St Mary's	57,744	332	174	99	583
Somerset	13,071	108	121	43	304
Talbot	24,689	167	148	46	537
Washington	85,183	488	175	132	645
Wicomico	52,886	307	172	91	581
Worcester	34,351	259	133	61	563
Maryland	3,428,936	20,001	171	5,642	608

Source: State Board of Elections; Department of Legislative Services

SBE regulations require each LBE to provide each polling place with the greater of two voting units or one voting unit per 200 registered voters and an additional voting unit for fractional parts of that number. SBE reports that each jurisdiction had at least one voting unit per 190 registered voters and some had as many as one voting unit per 121 registered voters. Overall, the State had one voting unit per 171 registered voters.

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There is currently no required standard for the distribution of ePollbooks in each polling place. In the 2008 general election, each jurisdiction had at least one ePollbook per 786 registered voters with some having as many as one ePollbook per 276 registered voters. Overall, the State had one ePollbook per 608 registered voters.

Approximately 3.4 million voters were registered in Maryland at the time of the 2008 general election, approximately 359,000 more than the 2004 general election. The voter turnout in the 2008 general election was actually slightly lower than the 2004 general election (77.33% compared to 78.03%). The State budget books provide a slightly lower figure for the voter turnout in the 2008 general election, 76.38%.

SBE indicates that the number of provisional ballots cast was 51,168, which is 2,232 higher than the number cast in the 2004 general election. Of the provisional ballots cast, approximately 34,012 were counted in full or in part, which is approximately 2,152 higher than in the 2004 general election.

The State Board of Elections should comment on the administration of the 2008 general election and whether any difficulties were experienced. It should also provide a copy of the formal analysis of the election to the budget committees when it is available.

Fiscal 2009 Actions

Impact of Cost Containment

The fiscal 2009 appropriation for SBE has decreased by approximately \$2.0 million as a result of cost containment actions taken by BPW in June and October 2008. The most significant of these decreases withdrew approximately \$1.8 million of the special fund appropriation for the new voting system because these funds were not needed in fiscal 2009. This action left \$274,000 for contractual services related to the new voting system in fiscal 2009. BPW also withdrew the same amount of general funds for the new voting system in the Major Information Technology Development Project Fund (MITDPF).

Another significant cost containment action reduced the number of contractual positions within SBE, a general fund reduction of \$155,000. These positions were not filled at the time of the reduction.

Other reductions were part of across-the-board reductions related to changes in health insurance funding, the elimination of payments to reduce the Other Post Employment Benefits liability, travel, and communications.

Two additional reductions are expected in fiscal 2009, including approximately \$33,000 in general funds which is expected as a result of the furlough plan pending BPW action and special funds in contractual services related to the new voting system. Details on Major Information Technology Development Projects are provided in the Governor's budget books and reflect a reduced

appropriation in fiscal 2009 compared to the working appropriation by \$132,500. The appropriation in the MITDPF is expected to be reduced by the same amount for the new voting system. Although, further reductions may be made by BPW.

Proposed Budget

As shown in **Exhibit 2**, the fiscal 2010 allowance for SBE decreases by approximately \$5.2 million, or 19.3%, compared to fiscal 2009 when accounting for reductions included in Section 18, 23, and 24 of the budget bill and deferred compensation which is contingent on the passage of legislation. The general fund appropriation decreases by approximately \$6.0 million, or 39.5%. The special fund appropriation decreases by approximately \$5.4 million, or 58.3%. The federal fund appropriation increases by \$6.2 million, or 233.8%.

The major changes in the fiscal 2010 allowance are related to both the planned new and existing voting systems.

Impact of Cost Containment

The fiscal 2010 allowance of SBE decreases by approximately \$229,000 for reductions included in the Sections 18, 23, and 24 of the budget bill. Specifically, these reductions include:

- two vacant positions and \$91,167 in general funds as a result of Section 18 of the budget bill;
- \$22,362 in general funds for contractual positions as a result of Section 23 of the budget bill; and
- \$115,402 in general funds based on expected savings from rebidding contracts as a result of Section 24 of the budget bill.

SBE indicates that to reduce two vacant positions per Section 18 of the budget bill, it expects to abolish a voter outreach coordinator position and the position of Deputy Director of the Candidacy and Campaign Finance Division. It has not yet developed specific plans related to the other reductions.

An additional reduction of \$13,035 in the deferred compensation match is contingent on the passage of legislation.

Personnel

The expenditures for regular earnings increase by \$113,589 in the fiscal 2010 allowance. SBE reports that this increase reflects reclassifications of positions. Section 12 of the budget bill reflects a scale change for the State Administrator of Elections compared to the fiscal 2009 budget bill. The change in salary occurred in fiscal 2009 and as a result does not increase the fiscal 2010 allowance.

**Exhibit 2
Proposed Budget
State Board of Elections
(\$ in Thousands)**

How Much It Grows:	General Fund	Special Fund	Federal Fund	Total
2009 Working Appropriation	\$15,252	\$9,198	\$2,636	\$27,086
2010 Allowance	<u>9,468</u>	<u>3,840</u>	<u>8,800</u>	<u>22,107</u>
Amount Change	-\$5,784	-\$5,358	\$6,164	-\$4,979
Percent Change	-37.9%	-58.3%	233.8%	-18.4%
 Contingent Reductions	 -\$242	 \$0	 \$0	 -\$242
Adjusted Change	-\$6,026	-\$5,358	\$6,164	-\$5,221
Adjusted Percent Change	-39.5%	-58.3%	233.8%	-19.3%

Where It Goes:

Personnel Expenses

Regular earnings	\$114
Employee and retiree health insurance pay-as-you-go costs	43
Retirement contribution	32
Decrease turnover expectancy from 4.3 to 3.0%	23
Deferred compensation including reduction contingent on the passage of legislation.....	-13
Delete funds to reduce Other Post Employment Benefits' unfunded liability.....	-13
Section 18 reduction of two vacant positions	-91
Other fringe benefit adjustments	-2

Voting System

New voting system including one lease payment and contractual services	2,614
Bridge contract for support services for existing voting system	803
Capital lease payments for existing voting system.....	-967
End of support services contract for existing voting system in December 2008.....	-7,698

Other Changes

Software to improve election night reporting.....	606
Contract cost changes including University of Maryland web site hosing, data exchange with Motor Vehicle Administration, and ePollbook maintenance	250

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Where It Goes:

Replacement equipment including computer, monitors, servers, and related information technology equipments.....	43
Developing replacement to campaign finance filing software partially offset by decreased cost of Computer Sciences Corporation Contract	20
Elimination of funding for independent system assessments of voter registration system	-50
Section 24 reduction of contractual services	-115
Unspecified changes to various contractual services.....	-935
Other	117
Total	-\$5,221

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

In the fiscal 2010 allowance, three positions in the election reform division of SBE which had been funded with federal funds are instead funded with general funds. SBE reports that one of these positions, voter outreach coordinator, is expected to be abolished pursuant to Section 18 of the budget bill. This position is currently vacant.

Existing Voting System

The fiscal 2010 allowance contains several changes associated with the existing voting system including changes in lease payments and changes in contracts for support services.

The capital lease payments for this system decrease by \$967,182 in the fiscal 2010 allowance. Of particular note is the change in the funding source for the capital lease payments. The fiscal 2010 allowance proposes to use approximately \$5.3 million in federal funds for the entire amount of the fiscal 2010 capital lease payments for the existing voting system; in fiscal 2009, these payments are split between State general and local special funds. The federal funds are available from HAVA. The State received approximately \$49.7 million of federal funds under HAVA. Under the current State Plan that SBE submitted to the Election Assistance Commission (EAC), \$30.0 million of the federal funds received were to be spent on the existing voting system, \$15.0 million to offset the costs of this system to the State and \$15.0 million to offset the costs of this system to the LBEs. SBE indicates that this amount has been fully allocated. Section 4 of Chapter 546 of 2001 requires that the costs of the uniform voting system be shared at 50% between the State and the LBEs. Section 6 of that Chapter requires that federal funds received for improvements in the voting system and equipment is to be distributed equally to the State and the counties to offset their respective costs. The remaining federal funds from HAVA are to be used for other improvements to the voting process, including the statewide uniform voter registration system, three positions in the election reform division of SBE, online voter lookup, election judge training materials, and a certification program for election officials. However, the fiscal 2010 allowance replaces the federal funding for the three positions with general funds.

Using federal funds rather than State general funds and local special funds in fiscal 2010 would require SBE to amend the State Plan. This action has an immediate benefit of reducing State and local spending in fiscal 2010, while still maintaining the payment schedule with the State Treasurer's Office. However, it reduces the federal funds available to offset State expenditures in future years. **SBE should comment on how much federal HAVA funding will be available after fiscal 2010 under this revised plan and how it intends to use the remaining funding. SBE should also provide to the committees a copy of the amended State Plan.**

The fiscal 2009 appropriation contains approximately \$7.7 million for a contract with Premier Election Systems, Inc. (Premier) for support services related to the existing voting system. This contract expired in December 2008, and as a result, no funding is contained in the fiscal 2010 allowance for this contract. However, because the contract for support services with Premier was set to end without a new voting system in place, SBE developed a bridge contract, awarded by BPW in December 2008 to Premier for core support services in the event of a special election. The fiscal 2010 allowance includes approximately \$803,000 for this purpose; fiscal 2009 costs are being covered within existing resources without a specific appropriation.

Planned New Voting System

In fiscal 2009, the appropriation to begin lease payments, along with some contractual services including independent validation and verification, was withdrawn in the actions taken by BPW in October 2008. These funds were not expected to be needed.

The fiscal 2010 allowance includes approximately \$1.5 million, the local share, of the expected lease payment in fiscal 2010. The State share of the lease payment, as was done in fiscal 2009, is included in the budget for the MITDPF. This is the first payment for the new voting system. The remaining payments are expected to occur between fiscal 2011 and 2015, with two payments made in each year, except fiscal 2015, when only one payment is expected to be made.

The fiscal 2010 allowance also includes \$1.4 million, the local share for contractual services related to the new voting system. The State share of the costs for these services is again included in MITDPF. These services are expected to support the implementation of the new voting system. The planned services include certification testing, acceptance testing, and independent validation and verification.

The funding available in the fiscal 2010 allowance represents a combined increase for SBE of approximately \$2.6 million over the amount in the fiscal 2009 budget. The actual costs of the lease payment and contractual services may vary based on the contract that is awarded.

In January 2009, SBE released a request for proposal (RFP) for the new voting system. The closing date for the RFP is March 5, 2009.

Contract Changes

The fiscal 2010 allowance includes an increase of approximately \$606,000 for software which SBE expects to use for a software solution and web site hosting to improve election night reporting.

The fiscal 2010 allowance includes \$553,460, primarily in federal funds, for the purpose of creating an interface between SBE and the Motor Vehicle Administration (MVA) which would resolve issues that led to committee narrative in the 2008 *Joint Chairmen's Report* (JCR). The narrative requested a plan for an integrated process of electronically capturing voter registration information from MVA and transferring that information in an agreed upon format to the statewide voter registration list. While funding has been provided in the fiscal 2010 allowance for this interface, the report on this plan has not yet been submitted.

SBE indicates that \$114,000 is provided in the fiscal 2010 allowance to begin to develop the capability for an online campaign finance filing system, which would ultimately replace the current filing software SBE sends to all campaign finance entities.

The fiscal 2010 allowance for several contracts results in a decrease of approximately \$935,000 compared to fiscal 2009. These contracts and the level of the fiscal 2010 allowance are:

- \$1.38 million for Saber Consulting related to the voter registration system;
- \$650, 000 for EDS Consulting for project management support for the existing voting system and other projects including implementation of the new voting system and early voting;
- \$366,000 for warranties and licenses for the existing voting system;
- \$200,000 for field support for the voter registration system; and
- \$25,000 for general software maintenance.

The fiscal 2009 funding for these contracts is unclear, primarily due to changes in budgeting. **DLS recommends committee narrative requesting SBE provide a report on existing and planned multi-year contracts, which should include the purpose and the estimated cost of the contract in each year including optional periods if applicable.**

Issues

1. Existing Voting System Actions in Fiscal 2009

In fiscal 2009, SBE took two significant actions related to the existing voting system including the awarding of a bridge contract for support services to Premier and the filing of a claim against Premier to recover costs associated with security improvements.

Bridge Contract

The support services contract for the existing voting system expired on December 31, 2008. In December 2008, BPW approved a bridge contract with Premier. This contract has a base period of six months, from January 1, 2009, through June 30, 2009, with two renewal options, each of three months. The total cost of this contract as approved by BPW, including the renewal options is \$1.96 million. The fiscal 2010 allowance includes an appropriation of \$803,000 for this purpose. The fiscal 2009 costs for this contract are expected to be covered within the existing SBE appropriation.

This bridge contract is designed to ensure that a voting system will be in place in the event of a special election prior to the implementation of the new voting system. The new voting system is not required to be in place for elections until January 1, 2010. The bridge contract provides for only those services deemed to be critical. There have been seven special elections since 2000.

Claim Against Premier

In November 2008, SBE filed a claim against Premier for approximately \$8.5 million. This claim is to recover the costs of corrective actions made by SBE based on the 23 actions required in the State of Maryland Diebold AccuVote-TS Voting System Security Action Plan. These costs were incurred during fiscal 2004-2009 and include consulting and technical services, personnel and logistics, and material and supplies.

Exhibit 3 Summary of Costs Included in Claim

<u>Spending Type</u>	<u>Description</u>	<u>Cost</u>
Consulting and Technical Services	Activities such as independent validation and verification, acceptance testing, security consulting, testing	\$6,876,380
Personnel and Logistics	Expenditures such as Chief Information System Security Office for SBE, support personnel, additional office space	1,191,694
Materials and Supplies	Expenditures such as tamper tape and software	403,102
Total		\$8,471,176

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Source: State Board of Elections; Office of the Attorney General

On December 23, 2008, a letter was sent from the Procurement Director of SBE to the President of Premier to notify Premier that all payments on the contract were being withheld and payments on the outstanding invoices were being suspended. According to this letter, these withheld and suspended payments are worth approximately \$3.3 million. **To the extent possible, SBE should comment on the status of the claim and if this claim is expected to have any impact on the bridge contract with Premier approved in December 2008 by BPW.**

2. Procurement of a New Voting System

Chapters 547 and 548 of 2007 require the voting system in Maryland to include a voter verifiable paper trail. Section 9-102(a) indicates that a voter-verifiable paper record includes:

- “(1) A paper ballot prepared by the voter for the purpose of being read by a precinct-based optical scanner;
- (2) A paper ballot prepared by the voter to be mailed to the applicable local board, whether mailed from a domestic or an overseas location; and
- (3) A paper ballot created through the use of a ballot marking device.”

The statute also require certain accessibility features for voters with disabilities.

The statute designates that these requirements apply to elections beginning January 1, 2010, and indicate that the requirement was contingent on sufficient funding being appropriated in the State budget by fiscal 2009.

The cost of the voting system is expected to extend from fiscal 2009 through 2015, for a total cost of approximately \$38.97 million. These costs will include contractual services and capital lease payments in each of the years fiscal 2010 through 2015. In fiscal 2010 and 2015 only one payment is expected, in each of the other years two payments are expected. The costs for the system are shown in **Exhibit 4**.

**Exhibit 4
Estimated Costs for the New Voting System**

<u>Type</u>	<u>Number of Units</u>	<u>Cost Per Unit</u>	<u>Total Cost</u>
Optical Scan Units	2,500	\$5,600	\$14,000,000
AutoMark Units	2,000	5,600	11,200,000
Election Management System Units	50	7,500	375,000
High Speed Scanners	10	45,000	450,000
Software Licenses	50	28,000	1,400,000
Peripherals			40,000
Expected Capital Lease Components			\$27,465,000
Implementation*			\$3,042,000
Voter Privacy Booths	1 per every 200 registered voters per precinct		4,650,000
Recurring Services**	One year		\$2,000,000
Estimated Interest for Life of Lease			\$1,494,000
Total			\$38,651,000

*Implementation costs include voter outreach, system testing, writing documentation, conducting precinct site surveys, and developing new security protocols.

**Recurring Services includes vendor staff needed to support the system.

Note: Interest cost over life of capital lease is estimated based on an interest rate of 1.9%.

Source: State Board of Elections; Department of Legislative Services

Recent Actions

The fiscal 2009 allowance contained a combined appropriation of \$6.8 million for a new voting system to comply with Chapters 547 and 548 of 2007 split between the budgets of SBE and MITDPF. The General Assembly reduced the appropriation for this purpose in fiscal 2009 by \$1.37 million in each the SBE and MITDF budget, a total of \$2.74 million, leaving approximately \$2.0 million in each of these budgets for this purpose.

In addition to the reduction in appropriation for the new voting system, the fiscal 2009 budget bill included the following restrictive language on \$1,000,000 of the special fund appropriation of the State Board of Elections (SBE):

“...provided that \$1,000,000 of this appropriation may not be expended until the State Board of Elections has submitted to the budget committees:

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- (1) The final Request for Proposals (RFP) that the board intends to issue for the new voting system in order to ensure that the voting system to be procured under the RFP meets the requirements of Chapter 548 of 2007. The budget committees shall have 15 days for review and comment.
- (2) Concurrent with any public submission to the Board of Public Works, any proposed contract award for a new voting system that is made as a result of the RFP.”

In October 2008, the budget committees released SBE from the requirement to submit the final RFP to the budget committees for review and comment prior to the release of the RFP due to concerns over the confidential nature of the RFP development and release process. During the same time period, the October 2008 BPW cost containment actions further reduced the funding for the new voting system by a total of \$3.6 million because it was not expected that payments on the new voting system would begin in fiscal 2009. As a result of these actions, both the SBE and MITDPF budgets contain \$274,000, a total of \$548,000, in fiscal 2009 for the new voting system. The actions also led to the restricted funds being reduced to \$0.

Details on Major Information Technology Development Projects provided in the Governor’s budget books indicate that the appropriation for the new voting system in fiscal 2009 will be further reduced, although no formal action withdrawing this appropriation has occurred. This reduction is expected to leave \$141,500 in each budget for fiscal 2009, for a total of \$283,000. Appendix 2 of this analysis presents project detail, including funding projections, although the exact amount of any pending BPW action is not known at this time.

The fiscal 2010 allowance includes a total appropriation of approximately \$5.8 million split equally between the two budgets for the purpose of a new voting system. This provides in each budget approximately \$1.5 million for one payment towards the capital lease as well as \$1.4 million for contractual services including certification testing, acceptance testing, and independent validation and verification.

On January 6, 2009, the State Board of Elections released the RFP for the new voting system. The RFP has a closing date of March 5, 2009.

Issues Related to the Procurement of a New Voting System

While the RFP released by SBE appears to meet the requirements described in Chapters 547 and 548 of 2007, DLS is concerned about the ability of SBE to award a contract under the RFP given the accessibility requirements in the statute.

The accessibility requirements include:

- Section 9-102(f), which prescribes specific requirements for the voting systems accessibility. Specifically, Section 9-102 (f)(1) requires that the voting system “Provide access to voters

with disabilities that is equivalent to access afforded voters without disabilities without creating a segregated ballot for voters with disabilities.”

- Section 9-102(f)(3), which provides that the voting system should “Comply with both the Americans with Disabilities Act, P.L. 101-336, and the Help America Vote Act, P.L. 107-262, including accessibility standards adopted as part of the Voluntary Voting System Guidelines pursuant to the Help American Vote Act.”
- Section 9-102(h)(1), which specifically requires that SBE must ensure that the accessibility portion of the voting system meet the Voluntary Voting System Guidelines that are in effect *at the time of the selection (emphasis added)*.

Under these requirements voting systems certified under the previous Voting System Standards developed by the Federal Election Commission could meet the requirements for the voting system generally as described in Section 9-102 (d)(2), which requires the voting system to be examined and meet the requirements set forth by the Federal Election Commission or the EAC. However, these systems would be unable to meet the accessibility requirements provided in Chapter 547 and 548 of 2007 because of the specific requirements included in these standards. It is the understanding of DLS that as of this writing only one voting system has been certified under the Voluntary Voting System Guidelines adopted by the U.S. Election Assistance Commission. This could lead to limited, partial, or no responses by vendors to the RFP.

Legislation has been introduced which if passed would appear to alleviate the concerns over whether vendors will be able to meet the accessibility requirements of the current law. These pieces of legislation generally include the following types of modifications to Section 9-102 of the Election Law Article: providing flexibility in the voting system standards that a system must meet and which organization is certified as the independent testing laboratory, authorization for SBE to certify a voting system without a voter verifiable paper trail for accessibility to voters with disabilities, and removal of language requiring equivalent access without a segregated ballot. This list is not exhaustive.

SBE should comment on whether the system certified under the Voluntary Voting System Guidelines established by EAC would meet the accessibility requirements of Chapters 547 and 548 of 2007. SBE should comment on how it intends to proceed if no or only partial responses are received under the RFP. SBE should also comment on how the legislation, if passed, is expected to impact the RFP for the new voting system released in January 2009.

3. Report on Voter Registration

The 2008 JCR included committee narrative requesting that SBE and MVA provide a report by December 1, 2008, with a plan for an integrated process of electronically capturing voter registration information from MVA and transferring that information in an agreed upon format to the statewide voter registration list and also on an agreement on how to handle any necessary subsequent mailings to MVA voter registration applicants until such an integrated process was in place. MVA

was also requested to continue to provide SBE with daily electronic lists of individuals applying for new/renewals of a Maryland Driver's License or Identification Card that had indicated a desire to register to vote and those individuals requesting a change of address or name to an existing driver's license or identification card. MVA was also requested to send a letter approved by SBE to each individual identified by SBE who is not registered or whose registration information was not up to date based on an MVA transaction on a monthly basis.

Monthly Mailings

SBE reports that MVA provided the electronic lists to SBE. SBE indicated it created form letters for MVA to send to identified individuals as requested. As shown in **Exhibit 5**, from the period May through August 2008, SBE reports a total of 105,212 letters were sent by MVA.

Exhibit 5 Number of Letters Mailed by Date of Mailing

<u>Date Letter Sent</u>	<u>Number of Letters Sent to Voters</u>
May 5, 2008	26,482
June 10, 2008	40,923
August 4, 2008	28,975
August 27, 2008	8,832
Total Sent	105,212

Source: State Board of Elections; Department of Legislative Services

SBE should comment on why no letters have been sent since August.

Report on Integrated Process

It is the understanding of DLS that both agencies submitted reports to the Department of Budget and Management (DBM) for review before submission to the budget committees. DBM found that separate reports would not meet the requirements of the narrative and that a unified approach was necessary. A consensus report is still in the process of development; however, funding is provided in the fiscal 2010 allowance for the creation of an interface between SBE and MVA. **SBE should comment on when it expects to submit this report.**

Recommended Actions

- | | <u>Amount
Reduction</u> | |
|--|------------------------------------|----|
| 1. Delete funding for software to improve election night reporting. The State Board of Elections reports it has identified software which will improve election night reporting. Funding for this software can be delayed until fiscal 2011. | \$ 331,950 | GF |
| | \$ 274,050 | FF |
| 2. Adopt the following narrative: | | |

Report on Existing and Planned Multi-Year Contracts: Primarily due to changes in budgeting, it is difficult to understand the changes in some contracts between fiscal 2009 and 2010. The committees request that SBE provide a report on existing and planned multi-year contracts in effect in fiscal 2009 and 2010. This report should include information on the starting date of the contract, expected end date of the contract, number and length of option periods if applicable, and the estimated cost of the contract in each year of the contract including optional periods if applicable.

Information Request	Author	Due Date
Report on existing and planned contracts in effect in fiscal 2009 and 2010	SBE	October 1, 2009

Total Reductions	\$ 606,000
Total General Fund Reductions	\$ 331,950
Total Federal Fund Reductions	\$ 274,050

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 2008					
Legislative Appropriation	\$14,448	\$8,934	\$2,179	\$0	\$25,561
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	448	0	0	0	448
Cost Containment	-108	0	0	0	-108
Reversions and Cancellations	-890	-231	-343	0	-1,464
Actual Expenditures	\$13,899	\$8,703	\$1,836	\$0	\$24,438
Fiscal 2009					
Legislative Appropriation	\$15,470	\$10,954	\$2,638	\$0	\$29,062
Cost Containment	-254	-1,756	-1	0	-2,012
Budget Amendments	36	0	0	0	36
Working Appropriation	\$15,252	\$9,198	\$2,636	\$0	\$27,086

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

Fiscal 2008

SBE had a general fund appropriation increase of \$340,634 during fiscal 2008. This increase was the result of increases totaling \$413,823 for judgments to pay attorney fees in two separate cases. The remaining increase of \$34,311 was due to employee cost-of-living adjustments (COLA). These increases were partially offset by a decrease of \$107,500 in cost containment measures as a result of eliminating honorariums for board members and increasing turnover. SBE reverted approximately \$889,566 from contractual services, grants, and some of the funding for judgments for attorney's fees.

SBE cancelled approximately \$231,161 of the special fund appropriation, which was largely in contractual services. In addition, SBE cancelled approximately \$342,975 of the federal fund appropriation related to contractual services and grants.

Fiscal 2009

The general fund appropriation for SBE has decreased by \$218,278 in fiscal 2009. This decrease is the result of an increase associated with employee COLAs (\$36,185), which was more than offset by cost containment actions (\$254,463) primarily affecting contractual positions. Other cost containment reductions occurred in the area of salaries and wages, communications, and travel.

The special fund appropriation for SBE has decreased by approximately \$1.8 million due to cost containment actions which reduced fiscal 2009 funding for the new voting system.

The federal fund appropriation for SBE has also decreased by \$1,283 in fiscal 2009 due to cost containment actions.

Major Information Technology Projects

State Board of Elections Optical Scan Voting System

Project Description:	This project is designed to meet the requirements of Chapters 547 and 548 of 2007 by allowing for the purchase, transition, implementation, and management of a new optical scan voting system that allows for a voter-verifiable paper trail. This law applies to all elections occurring on or after January 1, 2010.		
Project Business Goals:	The goal is to successfully implement the new voting by the time of the 2010 Gubernatorial Primary Election with a minimal increase in voter error rate and the same level of security as the current voting system. No return on investment has been identified. No quantifiable business goals have been identified at this time although SBE is working on a business plan for activities including voter outreach.		
Estimated Total Project Cost:	\$38,973,026 (split equally between the State and local jurisdictions)	New/Ongoing Project:	New in fiscal 2009 and ongoing in fiscal 2010
Project Start Date:	April 1, 2008 with the establishment of a planning committee	Projected Completion Data:	Implementation expected for the Gubernatorial Primary Election September 14, 2010
Schedule Status:	Project is currently delayed. The RFP and procurement process was expected to be completed by December 31, 2008. However, the RFP for the new voting system was not issued until January 6, 2009 with a closing date of March 5, 2009. According to the Mid-year Report on the Major Information Technology Development Projects the evaluation and award of the contract is not expected until fiscal 2010.		
Cost Status:	In fiscal 2009, the first year this project was in the budget, the projected total cost was approximately \$41.8 million. However, the fiscal 2010 allowance assumes a total project cost of approximately \$39.0 million. The actual cost of the system is unknown because the contract has not yet been awarded. The cost could be higher or lower than originally estimated.		
Scope Status:	No change. However, the accessibility requirements for the voting system might need to be altered if no vendors are able to respond to the RFP. Legislation has been introduced which would make alterations to the voting system requirements, potentially alleviating concerns.		
Project Management Oversight Status:	The fiscal 2009 budget included funding for Independent Validation and Verification, but it was eliminated in a cost containment action. However, the fiscal 2010 allowance includes funding for Independent Validation and Verification.		
Identifiable Risks:	The availability of equipment is a risk, particularly for the required ballot-marking device. However, SBE indicates the equipment availability risk may be somewhat mitigated because it is being purchased in an off year for elections. DLS is also concerned about the availability of equipment meeting the requirements of the law without changes. Other risks include technical risks associated with the calibration of the ballot marking device, the support of disability advocacy groups, implementation, public education, and certification and long term planning and preparation necessary for an election.		

Additional Comments:	<p>SBE has expressed concern and DLS shares the concern over the ability of any vendor to fully respond to any RFP that is issued to procure a new voting system. Only in February 2009 has one voting system been certified that meets the accessibility requirements as provided in Chapters 547 and 548. As a result, it is unclear whether SBE will get a response to the RFP issued in January 2009. It is also unclear how or whether SBE could proceed under no or only partial response. Legislation has been introduced which would make changes to the requirements of the voting system, which could eliminate this issue.</p> <p>In addition, this project has sustained a reduction in the fiscal 2009 funding for this project. This reduction left approximately \$540,000 split between SBE and the MITDPF because it was expected funding would not be needed in fiscal 2009 for this project. However, it appears that this appropriation will be further reduced in fiscal 2009 to \$283,000 split between SBE and the MITDPF. It is unclear what (if any) impact this will have on the project moving forward.</p> <p>In the funding chart below fiscal 2013 cost estimates include estimates for fiscal 2013 through 2015. This funding chart also reflects the lower fiscal 2009 appropriation (as shown in the Governor’s budget books) than currently exists in the appropriation.</p>								
	Fiscal Year Funding (\$ in Thousands)	Prior Years	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Balance to Complete	Total
	Personnel Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Professional and Outside Services	0.3	2.8	1.5	0.7	1.8	0.0	0.0	7.1
Other Expenditures	0.0	3.0	6.4	6.4	16.0	0.0	0.0	31.9	
Total Funding	\$0.3	\$5.8	\$7.9	\$7.1	\$17.8	\$0.0	\$0.0	\$39.0	

DLS: Department of Legislative Services
 MITDPF: Major Information Technology Project Development Fund
 RFP: Request for Proposal
 SBE: State Board of Elections

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

<u>Object/Fund</u>	<u>FY08 Actual</u>	<u>FY09 Working Appropriation</u>	<u>FY10 Allowance</u>	<u>FY09 - FY10 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	32.50	32.50	32.50	0	0%
02 Contractual	5.00	2.50	2.50	0	0%
Total Positions	37.50	35.00	35.00	0	0%
Objects					
01 Salaries and Wages	\$ 2,334,701	\$ 2,377,545	\$ 2,573,794	\$ 196,249	8.3%
02 Technical and Spec. Fees	225,413	157,031	232,400	75,369	48.0%
03 Communication	510,395	450,409	532,394	81,985	18.2%
04 Travel	21,616	22,500	22,900	400	1.8%
07 Motor Vehicles	9,046	2,476	2,325	-151	-6.1%
08 Contractual Services	1,853,531	3,611,194	6,135,095	2,523,901	69.9%
09 Supplies and Materials	165,239	195,855	201,313	5,458	2.8%
10 Equipment – Replacement	0	37,050	0	-37,050	-100.0%
11 Equipment – Additional	7,094,221	10,085,786	10,684,463	598,677	5.9%
12 Grants, Subsidies, and Contributions	12,047,045	9,814,367	1,400,460	-8,413,907	-85.7%
13 Fixed Charges	176,479	331,855	322,196	-9,659	-2.9%
Total Objects	\$ 24,437,686	\$ 27,086,068	\$ 22,107,340	-\$ 4,978,728	-18.4%
Funds					
01 General Fund	\$ 13,898,994	\$ 15,252,102	\$ 9,467,680	-\$ 5,784,422	-37.9%
03 Special Fund	8,703,058	9,197,688	3,839,660	-5,358,028	-58.3%
05 Federal Fund	1,835,634	2,636,278	8,800,000	6,163,722	233.8%
Total Funds	\$ 24,437,686	\$ 27,086,068	\$ 22,107,340	-\$ 4,978,728	-18.4%

Note: The fiscal 2009 appropriation does not include deficiencies. The fiscal 2010 allowance does not include contingent reductions.

**Fiscal Summary
State Board of Elections**

<u>Program/Unit</u>	<u>FY08 Actual</u>	<u>FY09 Wrk Approp</u>	<u>FY10 Allowance</u>	<u>Change</u>	<u>FY09 - FY10 % Change</u>
01 General Administration	\$ 4,155,460	\$ 3,966,626	\$ 4,316,894	\$ 350,268	8.8%
02 Help America Vote Act	18,343,905	22,845,442	14,902,908	-7,942,534	-34.8%
03 Major IT Development Projects	1,938,321	274,000	2,887,538	2,613,538	953.8%
Total Expenditures	\$ 24,437,686	\$ 27,086,068	\$ 22,107,340	-\$ 4,978,728	-18.4%
General Fund	\$ 13,898,994	\$ 15,252,102	\$ 9,467,680	-\$ 5,784,422	-37.9%
Special Fund	8,703,058	9,197,688	3,839,660	-5,358,028	-58.3%
Federal Fund	1,835,634	2,636,278	8,800,000	6,163,722	233.8%
Total Appropriations	\$ 24,437,686	\$ 27,086,068	\$ 22,107,340	-\$ 4,978,728	-18.4%

Note: The fiscal 2009 appropriation does not include deficiencies. The fiscal 2010 allowance does not include contingent reductions.