

D38I01
State Board of Elections

Operating Budget Data

(\$ in Thousands)

	<u>FY 09</u> <u>Actual</u>	<u>FY 10</u> <u>Working</u>	<u>FY 11</u> <u>Allowance</u>	<u>FY 10-11</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$14,949	\$8,366	\$8,641	\$275	3.3%
Contingent & Back of Bill Reductions	0	0	-65	-65	
Adjusted General Fund	\$14,949	\$8,366	\$8,576	\$210	2.5%
Special Fund	8,357	6,703	6,979	275	4.1%
Adjusted Special Fund	\$8,357	\$6,703	\$6,979	\$275	4.1%
Federal Fund	1,669	8,626	3,670	-4,956	-57.5%
Contingent & Back of Bill Reductions	0	0	-6	-6	
Adjusted Federal Fund	\$1,669	\$8,626	\$3,665	-\$4,961	-57.5%
Adjusted Grand Total	\$24,975	\$23,696	\$19,219	-\$4,476	-18.9%

Note: For purposes of illustration, the Department of Legislative Services has estimated the distribution of selected across-the-board reductions. The actual allocations are to be developed by the Administration.

- There are two proposed deficiency appropriations for the State Board of Elections (SBE) for fiscal 2010. One deficiency appropriation of \$100,000 provides general fund support for the online campaign finance database. The second provides \$276,059 in funding for early voting implementation, changes to the campaign finance reporting system to reflect legislative changes, and to support the continued use of the existing touchscreen voting system in the 2010 election.
- The fiscal 2011 allowance decreases by approximately \$4.5 million, or 18.9%, after accounting for contingent and Back of the Bill reductions. Federal funds decrease by approximately \$5.0 million, or 57.5%. The general and special funds of SBE increase by \$209,540 and \$275,455, respectively.
- The major changes are related to the voting system, voter registration, and election related expenses.

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

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Personnel Data

	<u>FY 09 Actual</u>	<u>FY 10 Working</u>	<u>FY 11 Allowance</u>	<u>FY 10-11 Change</u>
Regular Positions	32.50	30.50	30.50	0.00
Contractual FTEs	<u>2.10</u>	<u>2.10</u>	<u>2.10</u>	<u>0.00</u>
Total Personnel	34.60	32.60	32.60	0.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.88	2.90%
Positions and Percentage Vacant as of 12/31/09	2.00	6.56%

- There are no changes in the number of regular or contractual positions in the fiscal 2011 allowance. Not reflected in the statistics is the reduction of a temporary 0.4 contractual position initially budgeted in fiscal 2010.
- The turnover expectancy for SBE decreases from 3.21 to 2.9% in the fiscal 2011 allowance. To meet the turnover expectancy of 2.9%, SBE must keep 0.88 positions vacant. As of December 31, 2009, SBE had a vacancy rate of 6.6% representing 2 positions.

Analysis in Brief

Major Trends

New Performance Measures Provide Information on Implementation of New Initiatives: SBE revised its Managing for Results submission for fiscal 2011 to reflect new initiatives including the implementation of early voting and the implementation of an election certification program for employees of local boards of elections.

Issues

Procurement of a New Voting System: Chapters 547 and 548 of 2007 prohibits SBE from certifying a voting system without a voter-verifiable paper trail. In early 2009, SBE released a request for proposals (RFP) to procure the new voting system; however, SBE believed no vendor could meet the requirements of the law. Chapter 428 of 2009 altered the requirements for the procurement of the new voting system. SBE subsequently cancelled the initial RFP and issued two new RFPs to procure a new voting system and related support services. While SBE intended to take the procurements to the Board of Public Works (BPW) in early calendar 2010, no funding is included in the fiscal 2011 allowance for the new voting system or support services. The procurement of the support services is expected to appear before BPW in February 2010, but the status of the procurement for the new voting system is unclear.

Implementation of Early Voting: Chapter 445 of 2009 established the early voting process in Maryland. Early voting is expected to begin with the gubernatorial elections in calendar 2010. SBE has begun preparations for early voting including altering some regulations and approving early voting centers.

Fiscal 2009 Statewide Closeout Audit: The fiscal 2009 Statewide Closeout Audit noted that SBE had a \$2.0 million unfunded liability, as a result of not encumbering all required funds for a contract, that was not reported to the General Accounting Division of the State Comptroller of the Treasury. The special fund portion of this unfunded liability is available to be encumbered as a result of a fiscal 2010 budget amendment. However, it is unclear when the general fund portion will be available to be encumbered to meet this liability.

Recommended Actions

1. Add language to restrict funding until a report is submitted on existing and planned contracts and funding needs for the 2010 gubernatorial elections.

Updates

Voter Registration Process: Committee narrative in the 2008 *Joint Chairmen's Report* requested that SBE and the Motor Vehicle Administration (MVA) provide a report to the budget committees on a plan for the integrated process of electronically capturing voter registration information from the MVA and transferring that information in an agreed upon format to the statewide voter registration list. While only MVA had submitted a response to this request at the time of the 2009 session, funding was provided to SBE in fiscal 2010 for an interface. When SBE submitted its response in October 2009, the agency indicated that these funds were no longer expected to be used for this purpose. The fiscal 2011 allowance contains \$25,000 for improvements to the voter registration process with MVA.

D38I01
State Board of Elections

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 and ensuring compliance with State and federal election laws, including the federal Help America Vote Act (HAVA). Under the 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 with the advice and consent of the Senate, who is charged with oversight of the board's functions and supervising operations of the local boards 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. The four key goals of SBE are:

- to compile voter registration data into a uniform voter registration system that meets the requirements of the HAVA and is utilized to provide interactive voter services;
- to ensure that voters with disabilities will have access to polling places and voting methods that allow voters with disabilities to vote independently;
- to ensure that LBEs are conducting elections pursuant to the requirements of State and federal election law; State information technology security requirements; and the regulations, policies, and guidelines of SBE; 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

SBE revised its Managing for Results (MFR) measures for fiscal 2011 to capture information on planned new initiatives for the 2010 election cycle and beyond – early voting; a certification program for election directors, deputy directors, and other LBE employees; and the expansion of

D38I01 – State Board of Elections

online voter services. These new measures will enable an understanding of how well these new initiatives are working to meet the goals of SBE.

SBE intends to measure progress on early voting through a new objective to implement early voting consistent with State law (Objective 3.4). Under this objective, SBE plans to measure the compliance of LBEs with early voting center network requirements established by the State administrator, the percentage of early voting centers passing the site evaluation program, and the voter turnout for the early voting period. SBE indicates that it developed this new objective because it is a major project for the office impacting many parts of election administration. Because early voting will not be implemented until the 2010 election cycle, no data for previous election cycles is available.

The implementation of the new certification program, referred to as the Election Preparedness and Professional Development program, is reflected in a new objective to develop and implement an elections certification program for LBE employees (Objective 3.5). SBE plans to measure the number of certification courses offered, the number of LBE employees participating, and the number of LBE employees receiving certification.

One of the purposes of the certification program is to help ensure that all State and federal election laws and policies are met during the election. SBE intends to require a certain number of the courses to be completed by the various staff members, with election directors and deputy directors required to take all of the courses. The program will allow employees 24 months to complete the certification program. The courses will be free and are expected to cover areas including pre-election preparation, relevant State laws and ethics requirements, information technology, and voter registration policies and procedures. SBE explained at a briefing before the House Ways and Means Committee that it has begun to offer courses including one on voter registration and one on project management. SBE indicates that this style of program is considered a best practice and was identified in the State Plan for the HAVA. This certification program is new, and as a result, no data is available for previous election cycles.

The fiscal 2011 MFR submission expands SBE's measures related to online voter services, with a new objective (Objective 1.3). Under the new objective in fiscal 2011, SBE plans to measure:

- the percentage of absentee voters who receive their absentee ballot through SBE's web site;
- the percentage of voter registration applications submitted through SBE's web site; and
- the number of users of the online voter services provided on SBE's web site.

SBE explains that while Maryland law does not currently allow for voter registration applications to be submitted electronically, SBE anticipates that this will be a federal requirement for the next election cycle (2012). SBE noted that the electronic absentee ballot delivery will be available for the 2010 election cycle. SBE has \$30,000 available to develop the electronic ballot delivery process in each fiscal 2010 and 2011 allowance. No data is available for previous election cycles for these

two measures. SBE reported that the number of users of online voter services provided on the web site was 17,000 in the 2006 gubernatorial election cycle and 25,000 in the 2008 presidential election cycle. SBE anticipates increasing the performance in this area for the next gubernatorial and presidential election cycles (2010 and 2012).

Fiscal 2010 Actions

Proposed Deficiency

There are two proposed fiscal 2010 deficiency appropriations for SBE. The first proposed deficiency appropriation would provide \$100,000 to support the online campaign finance database. SBE indicates that the federal funds, which were anticipated to be used for the online campaign finance database, are not available for this purpose.

The second proposed deficiency appropriation would provide a total of \$276,059 of general funds for three purposes:

- modifying the election management system to track and report results from early voting locations (\$58,812);
- altering the electronic campaign finance filing software to comply with Chapter 543 of 2008 that allows campaign committees to file an affidavit in lieu of a campaign finance report under some circumstances (\$81,247); and
- providing the general fund support necessary to fully fund the election management system server license agreement (\$136,000).

Impact of Cost Containment

The fiscal 2010 general fund appropriation of SBE decreased by \$543,575 as a result of cost containment actions approved by the Board of Public Works (BPW) on July 22, August 26, and November 18, 2009.

The largest reductions (\$240,000) are part of planned fund swaps with either federal HAVA funds (\$150,000) or special funds from LBEs (\$90,000). These funding changes are for the voter registration system software, ePollbook software maintenance, and voting system battery replacement. The federal funds included in the cost containment actions as part of the planned fund swaps have not yet been brought into SBE's budget.

An additional decrease of \$70,176 is the result of savings anticipated from the furlough plan. Other reductions include:

D38I01 – State Board of Elections

- \$83,400 for other operating expenses;
- \$79,999 for capital leases to purchase computer equipment; and
- \$70,000 for technical and special fees.

In addition to the funding reduced from SBE's fiscal 2010 appropriation, reductions in the Department of Information Technology have eliminated the general funds available for the optical scan voting system in fiscal 2010. While the fiscal 2010 appropriation of special funds in SBE for the optical scan voting system has not been impacted by cost containment actions, this appropriation will likely be cancelled because no funding is available for the new voting system in the fiscal 2011 allowance, therefore, delaying implementation.

Proposed Budget

As shown in **Exhibit 1**, the fiscal 2011 allowance for SBE decreases by approximately \$4.5 million, or 18.9%, compared to the fiscal 2010 working appropriation after accounting for contingent and Back of the Bill reductions. The decrease of approximately \$5.0 million in federal funds is partially offset by modest increases in general funds (\$209,540) and special funds (\$275,455).

While the special fund appropriation in the fiscal 2011 allowance increases only 4.1%, there is some difference in the source of the special funds. In the fiscal 2010 working appropriation, the special fund appropriation is entirely from the local jurisdictions. In the fiscal 2011 allowance, the special funds from the local jurisdictions continue to represent the majority of the special fund appropriation; however, \$2.0 million is available through the Election Modernization Fund.

Impact of Cost Containment

The fiscal 2011 budget reflects several across-the-board actions to be allocated by the Administration. This includes a combination of employee furloughs and government shut-down days similar to the plan adopted in fiscal 2010; a reduction in overtime based on accident leave management; streamlining of State operations; hiring freeze and attrition savings; a change in the injured workers' settlement policy and administrative costs; and a savings in health insurance to reflect a balance in that account. For purposes of illustration, the Department of Legislative Services (DLS) has estimated the distribution of selected actions relating to employee furloughs and health insurance.

Exhibit 1
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>
2010 Working Appropriation	\$8,366	\$6,703	\$8,626	\$23,696
2011 Allowance	<u>8,641</u>	<u>6,979</u>	<u>3,670</u>	<u>19,290</u>
Amount Change	\$275	\$275	-\$4,956	-\$4,406
Percent Change	3.3%	4.1%	-57.5%	-18.6%
 Contingent Reductions	 -\$65	 \$0	 -\$6	 -\$71
Adjusted Change	\$210	\$275	-\$4,961	-\$4,476
Adjusted Percent Change	2.5%	4.1%	-57.5%	-18.9%

Where It Goes:

Personnel Expenses

Employee retirement	\$18
Decrease in turnover expectancy from 3.21 to 2.9%	6
Accrued leave payout	4
Social Security contributions	-10
Employee and retiree health insurance including estimated Section 19 reductions	-10
Regular earnings due to increases resulting from fiscal 2010 reclassifications and fiscal 2010 cost containment more than offset by estimated Section 18 furlough reductions	-48
Other fringe benefit adjustments	5

Voting and Election Systems

Election management system software maintenance	136
Capital lease payments for additional ePollbooks purchased for 2008 presidential elections partially offset by ongoing capital lease payments for existing voting system and ePollbooks	114
Existing voting system warranty and software maintenance as a result of anticipated decreased use of units in fiscal 2011	-247
Decreased funding available for contract with Premier for existing voting system support services due to planned fiscal 2010 encumbrances and anticipated decreased use in fiscal 2011	-1,390
Delay purchase of new optical scan voting system	-2,898

D38I01 – State Board of Elections

Where It Goes:

Voter Registration

Project support for MD Voters due to anticipation that new contract costs will be higher than existing contract	958
Voter registration data entry support for elections in fiscal 2011	211
MVA interface to improve voter registration process.....	25
Funding used to fully support MD Voters data refresh completed during fiscal 2010 available as a result of delay in MVA interface	-553

Election Related Expenses

Networking costs associated with election set-up.....	200
Online election judge training	100
Certification program for LBE employees.....	50
Technical support for ballot development.....	30
Printing as a result of requirements to publish election law information prior to an election that will be mostly completed prior to fiscal 2011	-30
Decreased funding needed for election night reporting improvements associated with utilization of existing resources including SBE staff	-50

Administrative Expenses

Communications primarily in telecommunications and DBM paid telecommunications.....	103
Temporary firewall specialist.....	-26
Fiscal 2010 funding to determine amount at dispute with Premier.....	-55
Decreased costs of contract with Computer Sciences Corporation.....	-56
Equipment for LBEs	-60
Decreases associated with funding source reallocations during fiscal 2010.....	-1,012
Other changes.....	8

Total **-\$4,476**

DBM: Department of Budget and Management
 LBE: local board of elections
 MVA: Motor Vehicle Administration
 SBE: State Board of Elections

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

Capital Lease Fund Source Changes

The fiscal 2011 allowance for the ongoing capital lease payments for the existing touchscreen voting system and ePollbooks decreases by only \$3,942. While the funding required for these capital lease payments is relatively stable in the fiscal 2011 allowance, the funding sources for the allowance for these ongoing capital lease payments are different than what is available in fiscal 2010.

D38I01 – State Board of Elections

The fiscal 2011 allowance includes \$2.0 million of special funds from the Election Modernization Fund to be used to pay for a portion of the capital lease payments for ePollbooks. These special funds are available as a result of Chapter 487 of 2009, the Budget Reconciliation and Financing Act (BRFA) of 2009. Section 38 of the BRFA of 2009 authorized the transfer of up to \$2.0 million from the Fair Campaign Financing Fund to the Major Information Technology Development Project Fund for the purpose of a new optical scan voting system. If the transferred funds are not required for that purpose, the funds are only allowed to be transferred to the Election Modernization Fund. The fiscal 2011 allowance assumes these funds will not be required in fiscal 2010 for the optical scan voting system, consistent with the delay in implementation. This assumption allows these special funds to be included in the fiscal 2011 allowance for another purpose. The remaining approximately \$1.8 million in required capital lease payments will be paid for with general funds, the typical funding source for the existing ePollbook capital lease payments.

In addition, the fiscal 2011 allowance relies on fewer federal funds and more on general and special funds to pay for the capital lease payments for the existing touchscreen voting system than is planned for fiscal 2010. In fiscal 2010 the capital lease payments for the existing voting system are expected to be paid entirely with federal HAVA funds. The fiscal 2011 allowance includes federal HAVA funding for less than half of the fiscal 2011 required capital lease payments (\$2.1 million). The remaining approximately \$3.2 million is funded equally by general and special funds, approximately \$1.6 million from each source.

Existing Voting System

A decrease of approximately \$2.9 million is the result of not providing funding for the new voting system in the fiscal 2011 allowance. As a result, SBE will need to continue to use the existing voting system for all voters in the 2010 gubernatorial elections.

The funding available for warranties and software maintenance for the existing voting system decreases from \$391,500 in fiscal 2010 to \$145,000 in fiscal 2011, a decrease of \$246,500 to reflect an anticipated decrease in the number of units used in the 2010 election cycle.

Elections Systems and Software (ES&S) purchased Premier Elections Systems, Inc. in calendar 2009. References to the vendor for the touchscreen system will, as a result, refer to ES&S. The contract with ES&S for support services for the existing voting system decreases by approximately \$1.4 million in the fiscal 2011 allowance. This decrease includes \$0.9 million brought in to the fiscal 2010 appropriation by budget amendment to increase the amount encumbered to pay for fiscal 2009 contract expenses for ES&S, pending the outcome of the claim against ES&S filed in fiscal 2009. Absent the planned encumbrance, the decrease in funding available for this contract in the fiscal 2011 allowance is \$0.5 million, as a result of a limited number of units to be supported in the 2010 election cycle.

An increase of \$30,000 will provide technical support for ballot development.

D38I01 – State Board of Elections

An increase of \$136,000 for the election management system software maintenance will fully fund this service in fiscal 2011. However, this cost is stable from fiscal 2010 to the 2011 allowance once adjustments are made to reflect a proposed deficiency appropriation.

Election-related Expenses

Increases totaling \$591,200 are related to activities that will support the 2010 gubernatorial elections. The largest of these increases includes \$211,200 for voter registration data entry support. As a result of the implementation of early voting, beginning with the 2010 primary election, limited time is available after the voter registration deadline to enter voter registration changes, leading to the need for additional support.

SBE also anticipates implementing an online election judge training program to supplement the training provided by LBEs, an increase of \$100,000.

As mentioned in the performance measures discussion, SBE plans to implement a new certification program for LBE employees. One of the goals of the program is to equip LBE staff with the knowledge and skills necessary to ensure compliance with State and federal election laws, procedures, and policies. There is no funding allocated for this purpose in the fiscal 2010 working appropriation. The fiscal 2011 allowance includes \$50,000 for this program for the purpose of hiring course instructors, printing course materials, acquiring the use of facilities for courses, and administering the program.

Other election-related increases include \$200,000 for networking set up and funding described earlier to support the capital lease payments and existing touchscreen voting system.

New Capital Lease Payments

The fiscal 2011 allowance recognizes capital lease payments for 169 additional ePollbooks purchased for six counties for the 2008 presidential election cycle, an increase of \$118,332 in special funds. Funding will be required for this purchase in fiscal 2010, approximately \$69,311 in special funds, but this funding is not currently available in the fiscal 2010 appropriation.

Issues

1. 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, defined as a paper ballot using an optical scan machine, and a system meeting certain accessibility standards. The statute designated that these requirements apply to elections beginning January 1, 2010. SBE released a request for proposal (RFP) to procure a voting system to meet the requirements described in Chapters 547 and 548 of 2007 in early 2009.

However, concern was expressed by both SBE and DLS during the 2009 session about the ability of any vendor to meet certain requirements of the statute as it pertains to the new voting system. The concern of SBE focused on two issues: the organization approving the testing laboratory and the need for the accessibility equipment to comply with the Voluntary Voting System Guidelines (VVSG) in effect at the time of selection. At the time, no system meeting these requirements had been certified.

Chapter 428 of 2009, which became effective May 7, 2009, addressed the two areas of concern with the original statute. This chapter allowed SBE to procure a voting system if it had been examined by a testing laboratory certified by either the U.S. Election Assistance Commission (EAC) or the National Association of State Election Directors resolving the first issue. In addition, it allowed SBE to procure a system that does not comply with the accessibility standards of VVSG and requires that at least one voting unit in each polling place to be accessible. The accessible voting system is not required to have a voter verifiable paper record. This has been viewed as allowing the continued use of the existing touchscreen voting system for voters with disabilities. These changes only apply if no commercially available system meets the requirements from Chapters 547 and 548 of 2007.

Chapter 428 of 2009 also provides that SBE must begin using a voter verifiable paper record voting system within two years of a determination that such a system has been tested and determined to comply with the accessibility standards in VVSG in effect at the time of the selection by a testing laboratory approved by EAC, is compatible with the voting system used in the State, and meets the certification standards of the State.

Chapter 428 also changed the date by which the new voting system must be in place to the 2010 gubernatorial primary election rather than January 1, 2010.

Recent Actions

On May 1, 2009, the Office of Attorney General (OAG) provided an advice letter to SBE indicating that SBE had supported the claim that no system met the requirements of Chapters 547 and 548 of 2007 and that SBE could, therefore, continue to use the touchscreen voting system for voters with disabilities. The advice letter provided two options for SBE to move forward with the procurement of the new optical scan voting system: (1) to cancel the current procurement and issue a

new RFP; or (2) to amend the existing procurement. On May 11, 2009, SBE announced its decision to cancel the existing RFP. SBE indicated that more competition might occur for an RFP seeking only optical scan voting systems.

SBE decided to issue two RFPs to procure the system and necessary support services. The first RFP, issued on July 20, 2009, sought to procure a contract for a variety of support services including the implementation of the new voting system, assisting with the creating of an interface between the two voting systems, and election support. The second RFP, issued on August 3, 2009, sought to procure the optical scan voting equipment. Both RFPs have closed. SBE indicated it intended to award the contracts in early calendar 2010.

The fiscal 2011 allowance contains no funding for a new voting system or the support services contract. Information provided by OAG indicates that unless legislation contains a specific mandate for funding, the requirements of the legislation are subject to the appropriation of funds. This means that, despite the requirement for the certification of a voting system with a voter verifiable paper trail, the lack of funding provided in the fiscal 2011 allowance will allow SBE to continue to use the already certified touchscreen system.

SBE intends to take the support services contract to BPW for approval in February 2010. It is not clear, however, what impact the implementation delay will have on the procurement process for the new voting system and other equipment that is ongoing and was nearing the expected award date.

SBE should comment on the status of the procurement process and its plans to move forward to implement an optical scan voting system after fiscal 2011.

Fiscal 2011 Funding

It is the understanding of DLS that the fiscal 2011 allowance contains funding for the existing touchscreen voting system, only to the extent that the system would have been used if a new optical scan voting system had been implemented. This means that the fiscal 2011 allowance represents funding required to support only the limited number of units needed to provide an accessible voting option for voters with disabilities. As a result, as shown in **Exhibit 2**, only approximately \$6.1 million is available to support the existing touchscreen voting system in the fiscal 2011 allowance.

Exhibit 2
Existing Touchscreen Voting System Funding Needs

<u>Type of Service</u>	<u>Allowance Fiscal 2011</u>	<u>Amount Needed for Fiscal 2011</u>	<u>Difference</u>
Support Services	\$342,000	\$1,266,000	-\$924,000
Touchscreen Warranty	120,000	470,250	-350,250
Touchscreen Software License Maintenance	25,000	97,812	-72,812
Server Software License Agreement	272,000	272,000	0
Touchscreen Accessories	5,000	300,000	-295,000
Ongoing Lease Payments	5,325,469	5,325,469	0
Subtotal of Voting System Services	\$6,089,469	\$7,731,531	-\$1,642,062
Ballot Printing and Delivery	0	600,000	-600,000
Delivery of Equipment and Supplies to Polling Place	0	929,500	-929,500
Subtotal of Other Services	\$0	\$1,529,500	-\$1,529,500
Total Cost	\$6,089,469	\$9,261,031	-\$3,171,562

Note: Touchscreen accessories include smart cards and batteries.

Source: State Board of Elections; Governor's Budget Books

Information provided by the State Board of Elections to the House Ways and Means Committee indicates that to continue to use the existing voting system approximately \$7.7 million would be required in fiscal 2011. With only approximately \$6.1 million available approximately an additional \$1.6 million is expected to be needed to support the continued use of the existing touchscreen voting system for the entire voting population in fiscal 2011.

In addition, some typical election costs do not appear in the fiscal 2011 allowance. These costs would be expected regardless of what type of system is used in the election. These costs include ballot printing and delivery and delivery of equipment and supplies to polling locations. As shown in Exhibit 2, no funding is available in the fiscal 2011 allowance for these activities, but approximately \$1.5 million is expected to be required.

As noted earlier, SBE intends to take a contract for support services, which it explains are required regardless of the voting system used, to BPW in February 2010. This contract would provide services including project management, election worker training, an acceptance test of the new voting system, voter outreach, and touchscreen equipment disposal.

The base contract amount of this contract is \$20.9 million for three years. SBE advises that the cost of the first year of the contract is \$10.5 million, and the second year of the contract is \$2.5 million. Some portion of both the first- and second-year contract costs will occur in fiscal 2011. SBE has not yet determined the cost per fiscal year but notes that it is likely that the majority of the costs for the contract will occur in fiscal 2011. SBE has not been able to provide estimates of the contract costs once items are omitted that clearly no longer apply. Without procuring a new system, the State does not need a contractor to conduct an acceptance test of a new system nor to dispose of the old system.

Whatever the actual costs represented by this services contract, no funding is available in fiscal 2010 or in the fiscal 2011 allowance. It is the understanding of DLS that additional funding will be made available to SBE to support this contract in fiscal 2010. However, the funding to support the fiscal 2011 portion of this contract is less clear.

SBE should comment on the adequacy of the fiscal 2011 allowance to support the continued use of the existing touchscreen voting system and the 2010 elections more generally. SBE should also comment on how it intends to pay for the contract costs in fiscal 2011.

2. Implementation of Early Voting

Chapter 513 of 2007 proposed a constitutional amendment that would authorize Maryland to use early voting for gubernatorial and presidential elections. The proposed constitutional amendment was approved by Maryland voters in the November 2008 presidential general election.

Chapter 445 of 2009 then prescribed the general requirements for early voting in Maryland. In particular, the chapter provided that:

- a voter could vote at any early voting center in the county where the individual resides;
- each county would have at least one early voting center with some counties having either three or five early voting centers based on the number of register voters in the county;
- SBE must designate the early voting centers, in collaboration with LBEs, at least six months before a primary election;
- in 2010, the early voting centers would be open from the second Friday before the election through the Thursday before the election, except Sunday, between 10 a.m. and 8 p.m.;
- in 2012, the early voting centers would be open from the second Saturday before the election through the Thursday before the election from 10 a.m. to 8 p.m. on all days except Sunday, and on Sunday from 12 p.m. to 6 p.m.; and
- voter outreach would be conducted for 30 days prior to early voting periods.

Implementation Activities

SBE has begun the preparations for early voting. SBE has added new regulations related to determining the location of early voting centers. These regulations:

- specify the date on which the number of active registered voters are determined and the timing of notification to LBEs of the required number of early voting centers;
- require SBE to develop a form with specific types of content to provide information on proposed early voting and alternate early voting centers and provide a timeframe for these forms to be available to LBEs;
- specify the length of time SBE has to vote on the proposed early voting centers; and
- describes the required provisions of the LBE agreement with the early voting center and the required components of a security plan for these sites.

SBE has developed the form described in the regulations. As shown in **Exhibit 3**, SBE anticipates there will be 46 early voting centers for the 2010 primary and general elections. All jurisdictions have submitted proposed early voting center locations. SBE advises that 23 jurisdictions have received approval for the early voting centers in the jurisdiction. Prince George's County has received approval for 4 of 5 early voting centers; an alternate early voting center site is pending approval.

SBE has also published additional proposed regulations in the *Maryland Register* that are needed to implement early voting. These regulations include:

- the allocations of various equipment (touch screen voting system, optical scan voting system, ePollbook, ballot printers, voting booth, and transfer cases);
- requirements for the preparation of early voting centers;
- requirements for the delivery and return of equipment allocated to the early voting centers;
- requirements for voter outreach;
- activities and requirements for LBE employees, LBE members, and LBE counsel;
- requirements for the number of election judges for early voting centers and election judge training;
- information to be posted at early voting centers;
- requirements for the early voting center evaluation program;

Exhibit 3
Early Voting Centers by Jurisdiction
2010 Election Cycle

<u>Jurisdiction</u>	<u>Early Voting Centers</u>
Allegany	1
Anne Arundel	5
Baltimore City	5
Baltimore County	5
Calvert	1
Caroline	1
Carroll	1
Cecil	1
Charles	1
Dorchester	1
Garrett	1
Frederick	1
Harford	1
Howard	3
Kent	1
Montgomery	5
Prince George's	5
Queen Anne's	1
St. Mary's	1
Somerset	1
Talbot	1
Washington	1
Wicomico	1
Worcester	1
Total Early Voting Centers	46

Source: State Board of Elections

- requirements for acceptable and prohibited activities at an early voting center; and
- security and other procedures for early voting center sites during non-voting hours.

These proposed regulations are pending final action.

SBE also initially advised that it is developing procedures and manual changes for election judges and begun the development process for on-demand capabilities including the software interface. However, neither action can be completed until a voting machine is selected. Given the recent change to continue the use of the existing voting system, some of these plans would be expected to change. However, no information has been available from SBE about how or whether it has made changes to early voting preparation as a result of not moving forward with the procurement of the optical scan voting system.

In addition, SBE is developing procedures for updating ePollbooks following each early voting day and prior to the election. SBE hopes to test this process early in calendar 2010.

SBE anticipates completing several other activities in preparation for early voting but has not yet begun these activities. In particular, SBE expects to conduct the mandated voter outreach, engage a data entry center to assist in processing voter registration information, and conduct pre-election tests. However, these activities will not occur until closer to the election dates. Finally, SBE expects to develop appropriate networking capabilities for early voting centers.

SBE should comment on the progress it is making to implement early voting for the 2010 primary and general elections and changes in early voting implementation resulting from not moving forward with the procurement of the optical scan voting system.

3. Fiscal 2009 Statewide Closeout Audit

Each year DLS, Office of Legislative Audits completes a statewide review of budget closeout transactions. The review for fiscal 2009 identified an unfunded liability of approximately \$2.0 million that was not reported to the General Accounting Division (GAD) of the State Comptroller of the Treasury. This unfunded liability was not reported to GAD by SBE due to an oversight; however, the reporting of this unfunded liability has been completed.

The approximately \$2.0 million unfunded liability was part of approximately \$5.1 million in total invoices received from ES&S for support services for the existing voting system that are being withheld pending a decision in a claim SBE filed against ES&S. 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.

SBE encumbered \$3.1 million of the funding required to pay these invoices, but \$2.0 million was not encumbered. One portion of a fiscal 2010 special fund budget amendment appropriated \$898,224 to enable SBE to encumber part of the funding for the outstanding invoices. **SBE should comment on the intended actions to ensure that a similar situation does not arise again. SBE should also explain when and how it intends to encumber the general fund portion of this unfunded liability, approximately \$1.1 million.**

Recommended Actions

1. Add the following language to the general fund appropriation:

, provided that \$100,000 of this appropriation made for the purpose of General Administration may not be expended until the State Board of Elections submits a report to the budget committees. This report shall include:

- (1) for each multi-year contract it holds, the starting date, expected end date, number and length of option periods, estimated cost of the contract in each year of the contract including option periods, the Comptroller subobject where the contract is budgeted, a brief explanation of the services provided for contracts over \$25,000 in effect in fiscal 2010, and 2011, and planned for fiscal 2012; and
- (2) the estimated need for additional funding required for fiscal 2011 to administer the 2010 gubernatorial elections in addition to the funding provided in the fiscal 2011 appropriation.

The report shall be submitted by August 1, 2010, and the budget committees shall have 45 days to review and comment. Funds restricted pending the receipt of a report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

Explanation: The 2009 *Joint Chairmen's Report* included committee narrative requesting the State Board of Elections (SBE) to provide to the committees a report on existing and planned multi-year contracts in effect in fiscal 2009 and 2010. The report was expected to 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. This report has not been submitted. In addition, SBE has not been able to provide full information on the funding available in the fiscal 2011 allowance to support the 2010 gubernatorial elections and early voting. This language would restrict \$100,000 of general funds in SBE until a report was submitted on the existing and planned major contracts and the estimated need for additional funding required to administer the 2010 gubernatorial elections.

Information Request	Author	Due Date
Report on existing and planned multi-year contracts and estimated funding need for the 2010 elections	SBE	August 1, 2010

Updates

1. Voter Registration Process

The 2008 *Joint Chairmen's Report* included committee narrative requesting that SBE and the Motor Vehicle Administration (MVA) provide a report 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. SBE and MVA were also directed to take specific actions including MVA providing SBE with daily electronic lists of applicants for a driver's license or identification card that indicated a desire to register to vote and a change of address or change of name on existing licenses and identification cards and mail letters to each of those individual who are not registered or do not have updated voter registration data.

The submission of the report was delayed beyond the requested due date of December 1, 2008, that DLS understands was in an attempt to submit a joint report. A joint report was not ultimately submitted, but SBE and MVA have each submitted a report.

According to SBE and MVA, the current voter registration process with MVA includes the customer service agents at MVA asking individuals at the end of an action involving driver's licenses or identification cards whether the individual would like to apply to register to vote. If the individual says yes, the individual must complete the application and then either return it to the customer service agent, place it in a collection box at MVA, or deliver to the Board of Elections.

SBE and MVA Reports

Both the SBE and MVA reports noted that pursuant to the committee request, MVA provided electronic lists to SBE. SBE indicates that MVA printed and mailed 105,212 letters as a result of this exchange between January 2007 and July 15, 2008, and that SBE had received 13,365 replies. MVA indicated that the costs to MVA for the mailings between May and August 2008 were \$70,000, and additional funds would be required for future mailings. SBE indicates that the total cost of the project for the two agencies combined was approximately \$96,024.

SBE's report identifies five steps that would need to occur to have an integrated process. These steps include:

- business process change at MVA to allow for the voter registration activity to occur for all MVA transactions, not just driver's licenses and identification cards, and through all methods that these transactions can occur;
- allowing customer service agents at MVA to complete the application online including the ability to capture an electronic signature;

D38101 – State Board of Elections

- alter the database of MVA to ensure only valid residential addresses are used;
- alter the address entry to allow for separate address fields; and
- the development of interfaces for electronic voter registration, electronic signature, address updates, identifying duplicate individuals (in instances when names are changed).

SBE believed that the interfaces and business process changes could be implemented within 24 months of a procurement award.

MVA expressed several concerns over an integrated process and indicated that an integrated process is not currently feasible. The concerns noted by MVA include:

- the need for additional positions and the associated costs of these positions including supplies and work stations at a total cost of more than \$1.4 million;
- the cost of computer programming at approximately \$120,000;
- the potential for increased customer transaction times resulting in increased wait times if no new positions were available; and
- the potential impacts of asking customer service agents to ask individuals about party affiliation, willingness to act as an election judge, voter registration laws, and qualifications for voting.

MVA offered an alternative proposal to fully integrate the two data systems. In particular, MVA suggested that SBE develop a method to allow LBEs to track individuals who have expressed a desire to register to vote or to update voter registration information during a transaction with the MVA but have not yet submitted a paper application.

Funding

The fiscal 2010 appropriation for SBE included funding that was expected to be used for the development of an interface between SBE and MVA. SBE intended to bring a modification to the existing voter registration contract that would have developed a new method for receiving the voter registration data from MVA and a method for processing the data that is received to BPW on August 26, 2009. This modification was ultimately withdrawn from the agenda.

SBE explained in the cover letter of the report that the changes that were explored would only improve the exchange minimally. At a cost of approximately \$546,000, SBE determined that it would take more than five years for the investment to be paid off, considering that the 2008 method was accomplished for under \$100,000.

D38I01 – State Board of Elections

The fiscal 2011 allowance contains \$25,000 for the MVA interface. SBE has identified an alternative means of improving the voter registration process with MVA that will require fewer funds in fiscal 2011.

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 2009					
Legislative Appropriation	\$15,470	\$10,954	\$2,638	\$0	\$29,062
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	106	0	0	0	106
Cost Containment	-624	-2,020	-1	0	-2,645
Reversions and Cancellations	-3	-577	-967	0	-1,547
Actual Expenditures	\$14,949	\$8,357	\$1,669	\$0	\$24,975
Fiscal 2010					
Legislative Appropriation	\$8,855	\$3,840	\$8,626	\$0	\$21,321
Cost Containment	-544	0	0	0	-544
Budget Amendments	55	2,864	0	0	2,919
Working Appropriation	\$8,366	\$6,703	\$8,626	\$0	\$23,696

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

Fiscal 2009

SBE had a net decrease in general fund appropriation of \$517,799 during fiscal 2009 as a result of cost containment actions and budget amendments. An increase of \$70,000 resulted from a transfer from BPW Contingent Fund to replace the heating and air conditioning system in the location of the computer server, as well as the implementation of an inventory system. An additional increase of \$36,185 was associated with employee cost-of-living adjustments. These increases were more than offset by cost containment actions totaling \$623,984 including:

- a reduction in funding for the bridge contract with ES&S for support services for the existing voting system (\$305,000);
- eliminating 3 contractual positions (\$155,000);
- abolishing 2 regular positions, furloughs, adjustments to health insurance and Other Post Employment Benefits (\$126,588); and
- reductions in other general operating expenses (\$37,396).

SBE reverted approximately \$3,403 of the general fund appropriation in the Help America Vote Act Program.

During fiscal 2009, the special fund appropriation of SBE was reduced by approximately \$2.0 million as a result of cost containment actions from delays in the implementation of the new voting system. SBE also cancelled approximately \$576,623 of the special fund appropriation in the HAVA program.

The federal fund appropriation of SBE decreased by \$1,283 as a result of cost containment actions. SBE also cancelled approximately \$967,245 of the federal fund appropriation in the areas of contractual services and aid to political subdivisions in the HAVA program.

Fiscal 2010

The general fund appropriation of SBE has decreased by \$488,575 during fiscal 2010. An increase of \$55,000 from the BPW Contingent Fund to provide funding for an independent auditor to assist in the claim against ES&S is more than offset by a decrease of \$543,575 in cost containment actions. The cost containment actions include a reduction of \$150,000 for contractual services and supplies in general funds that will be replaced with federal funds, and a reduction of \$90,000 for ePollbook software maintenance to be replaced with special funds. The remaining cost containment actions include decreased funding for supplies (\$80,000), replacement equipment (\$79,999), furlough savings (\$70,176), technical and special fees (\$70,000), and travel (\$3,400).

D38101 – State Board of Elections

The fiscal 2010 special fund appropriation for SBE has increased by approximately \$2.9 million. The majority of this increase is available for contractual services (approximately \$1.9 million), including the voter registration system project support, project management support, ePollbook software license maintenance, voting system warranty, General Election Management System servers software license, and eballots. An increase of \$898,224 in grants is for the existing voting system contract and equipment for local board of elections. The remaining increase (\$10,000) is the result of funding available from the Major Information Technology Development Project Fund appropriated into the fund in fiscal 2009 for the optical scan voting system which was not expended in that year.

Major Information Technology Projects

State Board of Elections Optical Scan Voting System

Project Description:	This project was expected 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 allowed for a voter verifiable paper trail. The requirements, as amended by Chapter 428 of 2009, applied to all elections beginning with the 2010 gubernatorial primary election.		
Project Business Goals:	The goal of the program was to successfully implement the new voting system 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.		
Estimated Total Project Cost:	\$38,973,026 (split equally between the State and local jurisdiction), Chapter 428 of 2009 altered the requirements for accessibility of the voting system that would have been expected to lower the cost in the short term.	New/Ongoing Project:	Project was new in fiscal 2009, ongoing in fiscal 2010, and on hold during fiscal 2011
Project Start Date:	April 1, 2008, with the establishment of a planning committee.	Projected Completion Date:	Implementation was expected to be completed for the 2010 gubernatorial primary election in September 2010 as required under Chapter 428 of 2009; however, with the project on hold, the implementation date is unknown.
Schedule Status:	Project was on schedule to be implemented for the 2010 gubernatorial primary election in September 2010. The State Board of Elections (SBE) anticipated the contracts for the new voting system to be taken to the Board of Public Works for approval in February 2010. However, the fiscal 2011 allowance provides no funding for this system. The implementation date for the new optical scan voting system is, as a result, unknown.		
Cost Status:	<p>Chapter 428 of 2009 altered the requirements for the accessibility component of the new voting system if no system was available at the time of procurement that met the accessibility requirements of Chapters 547 and 548 of 2007. SBE determined that no system was available that would meet the accessibility requirements of those chapters. As a result, SBE moved to procure a new optical scan voting system, but anticipated continuing to use the existing voting system for individuals with disabilities. This was anticipated to lower the cost of the new voting system in the short term. The contract has not yet been awarded for the new voting system, and as a result, the difference between the anticipated cost and the cost of the system absent these services, is not known.</p> <p>In addition, the fiscal 2010 general fund appropriation for this has been eliminated through a contingent reduction, initially expected to be replaced with funding from the Fair Campaign Financing Fund and cost containment actions. While the special fund appropriation has not yet been reduced to reflect the delay in this project, the funding is no longer expected to be needed for this purpose in fiscal 2010. As a result, the</p>		

	Department of Legislative Services (DLS) anticipates that these funds will be reduced during the fiscal 2010 closeout process. The fiscal 2011 allowance provides no funding for this project.							
Scope Status:	Under Chapters 547 and 548 of 2007, SBE would have procured both optical scan voting equipment and ballot marking devices. As a result of Chapter 428 of 2009, the ongoing procurement was not expected to result in the purchase of accessible voting machines.							
Project Management Oversight Status:	Project is on hold, although procurement is ongoing.							
Identifiable Risks:	Project is on hold, with unknown implementation date.							
Additional Comments:	<p>Procurement for the new voting system is ongoing. New contracts were expected to be taken to the Board of Public Works for approval in February 2010. However, the fiscal 2011 allowance includes no funding for this project. The impact of this on the procurement process is not yet known.</p> <p>The fiscal year funding chart recognizes that the fiscal 2010 appropriation has not yet reduced special funds available for this project in the budget of SBE, which DLS anticipates will be reduced during the fiscal 2010 closeout process.</p>							
Fiscal Year Funding (\$ in Thousands)	Prior Years	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	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	1,420.0	0.0	0.0	0.0	0.0	0.0	0.0	1420.0
Other Expenditures	1,487.5	0.0	0.0	0.0	0.0	0.0	0.0	1,487.5
Total Funding	\$2,907.5	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$2,907.5

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

<u>Object/Fund</u>	<u>FY09 Actual</u>	<u>FY10 Working Appropriation</u>	<u>FY11 Allowance</u>	<u>FY10 - FY11 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	32.50	30.50	30.50	0	0%
02 Contractual	2.10	2.10	2.10	0	0%
Total Positions	34.60	32.60	32.60	0	0%
Objects					
01 Salaries and Wages	\$ 2,636,362	\$ 2,300,017	\$ 2,429,501	\$ 129,484	5.6%
02 Technical and Spec. Fees	155,577	127,205	332,275	205,070	161.2%
03 Communication	881,300	512,449	615,509	103,060	20.1%
04 Travel	13,245	22,900	9,500	-13,400	-58.5%
07 Motor Vehicles	2,903	2,325	2,906	581	25.0%
08 Contractual Services	3,132,514	7,331,578	6,280,671	-1,050,907	-14.3%
09 Supplies and Materials	86,481	113,813	62,726	-51,087	-44.9%
10 Equipment – Replacement	17,134	0	0	0	0.0%
11 Equipment – Additional	10,355,026	10,604,464	9,231,317	-1,373,147	-12.9%
12 Grants, Subsidies, and Contributions	7,398,369	2,358,684	0	-2,358,684	-100.0%
13 Fixed Charges	295,440	322,196	325,669	3,473	1.1%
14 Land and Structures	926	0	0	0	0.0%
Total Objects	\$ 24,975,277	\$ 23,695,631	\$ 19,290,074	-\$ 4,405,557	-18.6%
Funds					
01 General Fund	\$ 14,949,179	\$ 8,366,412	\$ 8,641,164	\$ 274,752	3.3%
03 Special Fund	8,357,065	6,703,269	6,978,724	275,455	4.1%
05 Federal Fund	1,669,033	8,625,950	3,670,186	-4,955,764	-57.5%
Total Funds	\$ 24,975,277	\$ 23,695,631	\$ 19,290,074	-\$ 4,405,557	-18.6%

Note: The fiscal 2010 appropriation does not include deficiencies.

**Fiscal Summary
State Board of Elections**

<u>Program/Unit</u>	<u>FY09 Actual</u>	<u>FY10 Wrk Approp</u>	<u>FY11 Allowance</u>	<u>Change</u>	<u>FY10 - FY11 % Change</u>
01 General Administration	\$ 3,988,863	\$ 3,955,715	\$ 4,059,226	\$ 103,511	2.6%
02 Help America Vote Act	20,976,414	16,842,378	15,230,848	-1,611,530	-9.6%
03 Major IT Development Projects	10,000	2,897,538	0	-2,897,538	-100.0%
Total Expenditures	\$ 24,975,277	\$ 23,695,631	\$ 19,290,074	-\$ 4,405,557	-18.6%
General Fund	\$ 14,949,179	\$ 8,366,412	\$ 8,641,164	\$ 274,752	3.3%
Special Fund	8,357,065	6,703,269	6,978,724	275,455	4.1%
Federal Fund	1,669,033	8,625,950	3,670,186	-4,955,764	-57.5%
Total Appropriations	\$ 24,975,277	\$ 23,695,631	\$ 19,290,074	-\$ 4,405,557	-18.6%

Note: The fiscal 2010 appropriation does not include deficiencies.