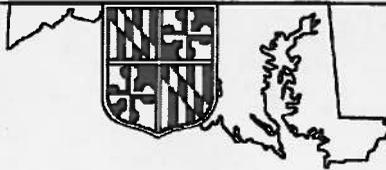


STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

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Administrator

Nikki Charlson
Deputy Administrator

Memorandum

To: House Appropriations Committee
Subcommittee on Public Safety and Administration
February 19, 2015

Senate Budget and Taxation Committee
Health and Human Services Subcommittee
February 20, 2015

From: Linda H. Lamone, State Administrator of Elections

Subject: Response to Department of Legislative Services' Fiscal Year 2016 Budget Analysis

Thank you for the opportunity to respond to the Department of Legislative Services' (DLS) analysis of the State Board of Elections' (SBE) Fiscal Year 2016 budget. Before responding to specific questions raised in the analysis, I would like to update the committees on the 2014 General Election.

2014 General Election Wrap-Up

As has been widely reported, turnout in the 2014 General Election was very low. Of the 3.7 million registered voters, 1.7 million voted (47.1%). This compares to a 54% turnout in the 2010 General Election.

Most voters still vote on election day (77%), but the percentage of voters who vote during early voting is steadily increasing (18%). The percentage of voters who vote during early voting varies greatly by county with early voters making up just 7% of total turnout in Allegany County but 32% of total turnout in Talbot County. Absentee and provisional voting continues to hold steady at 4% and 2%, respectively, of total voter turnout.

Once again, SBE had call center support to handle call volume for SBE and four local boards of elections (Baltimore City and Anne Arundel, Baltimore, and Prince George's Counties). The call center representatives handle routine calls (such as "am I registered to vote?" and "where is my polling place?") and escalate other calls to SBE or the local boards. This resource enables SBE and the local boards to handle more substantive calls and focus on election preparation activities. For the three week period leading up to the election, the call center handled a total of 22,448 calls.

The number of people needed to conduct an election is impressive. There are over 200 employees at the local boards of elections, over 300 temporary staff hired through State contract and more hired directly by the local boards of elections, and more than 20,000 election judges who worked during early voting and on election day.

In the 2014 General Election, SBE continued to offer online voter registration and ballot request and delivery of absentee ballots via our website. These systems continue to be popular with voters and efficient for election administrators. In 2014, over 8,000 new registrations and over 37,000 updates were processed through the online voter registration system. Over 12,000 voters downloaded a blank ballot and completed it by hand, and almost 1,800 voters used the online tool to mark their ballots. SBE monitored the system continuously.

As noted in DLS' analysis, very few issues were reported in the 2014 General Election. The most frequently reported issue concerned "vote flipping." A small number of voters reported that, when they touched one candidate's name, a different candidate would be selected. It is important to note that **every** voter that reported the issue confirmed that they were able to correct their selection either on the contest page or from the summary page and that the summary page reflected their intentions when they cast their ballot.

When voters reported this issue, the local boards followed protocol and monitored the units with the reported issue. If multiple voters reported the same issue on the same voting unit, the unit was to be taken out of service. Out of almost 18,000 voting units, 35 voting units were withdrawn from service due to these allegations. After the election, all 35 units were tested, and this testing found no issues with 20 of the units, confirmed calibration issues in eleven units, and identified other issues on four units (spots on two units where the touchscreen did not respond, one unit had a power issue, and one unit had an "incorrect display" message).

Recommended Action

SBE concurs with DLS' recommendation and requests that the Senate's Health and Human Services Subcommittee and the House's Subcommittee on Public Safety and Administration approve any supplemental FY 2016 requests.

Issues Raised in the Department of Legislative Services' Analysis

- 1. *SBE should comment on any steps planned to improve voter turnout in future elections.* (page 6)**

Voter turnout is driven by issues unrelated to election administration. Low voter turnout is attributed to a wide array of economic, demographic, cultural, technological, and institutional factors and is not unique to Maryland.

Historically, increasing voter turnout is not a function of SBE or local boards, and neither SBE nor the local boards have individuals whose job duties relate to increasing voter turnout. State and local election officials do, however, participate in voter registration drives. SBE contacts individuals who appear to be eligible to vote but are not and provides information on how to register.

Efforts to increase turnout are generally conducted by non-profit organizations, political parties, and candidates. For example, the National Student Parent Mock Election enables students to vote in a mock election and encourages students to discuss voting with parents. Similarly, the League of Women Voters promotes voter registration and making voting more accessible and Rock the Vote focuses on getting youth registered to vote and voting. For the 2016 elections, SBE plans to develop a web-based application that third party organizations that can use to register voters and submit to SBE voter registration data electronically.

2. *SBE should comment on how the allocation of equipment is determined.* (page 9)

Prior to the 2014 General Election, the allocation for voting units was based on a defined ratio of one voting unit for every 200 registered voters, with a minimum of two voting units in each polling place. After the 2012 General Election, the University of Baltimore Schaefer Center for Public Policy issued a report identifying various factors that impact wait time and recommended a more flexible equipment allocation mode. In response, SBE amended the regulations to remove the defined ratio and provide election officials with more flexibility to allocate equipment.

Several months prior to the election, SBE estimates the voter registration figures in each polling place (including early voting centers) for that election using previous voter registration growth for similar elections. SBE then reviews historical turnout information for early voting, absentee voting and provisional voting and prior equipment allocation. With this information, SBE uses a model developed by the Schaefer Center for Public Policy to estimate wait times for different equipment allocation and proposes for each local board an allocation of voting units and electronic pollbooks for each voting location.

In the majority of cases, local boards agree with SBE's proposed equipment allocation plan, although a local board may allocate additional equipment if it expects that a particular voting location will have higher than expected turnout. Occasionally, a local board will request a lower allocation. In this case, SBE requests an explanation for the lesser allocation plan and the State Administrator has the final determination.

DLS' analysis notes that the ratio of voting units to registered voters for one county - Talbot County - was much greater than the ratio in other counties in the 2014 General Election. Talbot County consistently has the highest percentage of voters who vote during early voting (as a percentage of total voter turnout). As a result, fewer Talbot County voters are expected to vote on election day, less voting units are needed, and with an expected low turnout, the ratio of voting units to registered voters can be higher.

3. *SBE should comment on any other issues that arose during the elections and steps SBE took to correct any issues.* (page 12)

Turnout in the 2014 General Election was low, and as a result, very few voters had to wait more than 30 minutes to vote on election day. On election day, voters had an average total wait time of 2:54 minutes. As was the case in the 2012 General Election, there were longer lines during early voting, but they were uncommon in most early voting centers and in those early voting centers with lines, they were limited to the final day of early voting. On the

eighth and final day of early voting, there were lines of more than 40 voters at ten early voting centers. The average wait time for an early voter was 5:54 minutes.

Other than reports of alleged vote flipping, there were no other issues during the 2014 General Election.

4. *SBE should comment on how the agency chose new [Managing For Results] measures.* (page 12)

In response to DLS' FY2015 analysis, SBE reviewed objectives and performance measures for ongoing relevance and identified new objectives and performance measures that reflect new initiatives. For each performance measure, SBE then determined the appropriate measurement period.

The three voter registration related performance measures relate to new initiatives. As a member of the Electronic Registration Information Center, SBE is required to contact Marylanders who appear eligible to vote but are not registered to vote and invite them to register to vote. This notification is a new way to offer all eligible Marylanders the opportunity to register to vote, one of SBE's MFR goals. Since this notification occurs only during election years, the appropriate time period of measurement is the election cycle.

In 2012, the Motor Vehicle Administration (MVA) began electronically transferring to SBE voter registration information for customers who indicated that they wanted to register to vote or update their registration. This electronic transfer of information has reduced the number of individuals who reported registering or updating their registration at MVA but the registration information was not received by election officials. SBE intends to work with other State agencies required under federal law to offer voter registration to transfer electronically the registration information and achieve the benefits currently experienced with MVA. This effort is not dependent on an election, and therefore the appropriate time period of measurement is the fiscal year.

The third new voter registration related measure relates to the percentage of voter registration applications submitted electronically from nongovernmental agencies. As noted above, SBE plans to develop for the 2016 elections a web-based application that third party organizations can use to register voters and submit to SBE voter registration data electronically. This effort will reduce the errors associated with interpreting hand written forms, delays in receiving from third party organizations voter registration information, and reduce the time to process voter registration transactions. Voter registration activity by third party organizations occurs only during election years, and as a result, the election cycle is the appropriate time period to measure.

The two new measures related to the performance of the local boards. Starting with the 2012 elections, SBE conducts after each election a comprehensive post-election audit of the local boards. Previous performance measures related to the number of audit topics and average number of audit findings. After having conducted four audits, SBE now believes that performance measures related to audits should be focused on the percentage of local boards with more than a certain number of findings. This approach recognizes that SBE may identify findings but the goal is for each local board to have only a small number of findings. Since

these audits are only conducted during an election cycle, the appropriate time period to measure is each election cycle.

The final new performance measure is the annual percentage change in Twitter followers. SBE is committed to developing a presence on social media, and Twitter is one focus of this commitment. Measuring the growth in followers by fiscal year will track SBE's ability to retain and grow our social media presence. Although SBE expects that SBE's presence and followers will vary between election years and non-election years, SBE believes that each fiscal year is the appropriate time period to measure.

5. SBE should explain why its fiscal 2016 budget does not include sufficient funding for the 2016 presidential primary. SBE should also explain why the original lease for the voting system equipment did not include a sufficient amount of equipment to properly conduct an election. SBE should also explain how/when it intends to procure the additional equipment. (page 18)

When SBE submitted its draft FY16 budget, there was limited information based on the procurement process for the new voting system. Until the contract with Election Systems and Software (ES&S) was approved in December 2014, many of the requirements, counts, and costs for carts, booths, servers, voting system supplies, and other major equipment and supply items were unknown.

SBE's initial request for equipment was based on a best case scenario after balancing costs and expected needs. Now that the voting system solution is known, SBE and the local boards are refining the equipment allocation for each voting location. This process includes discussing the impact of the new voting system and the issues associated with long lines and the implementation of same day registration and address changes during early voting.

For example, SBE initially expected to re-deploy the ballot marking devices used during early voting for election day voting. After further analysis, this proved not to be a viable option due to transportation logistics. By the last day of early voting (the Thursday before the election), most of the equipment for election day has already been delivered and is securely stored at more than 1,600 polling places. As a result, the ballot marking devices used for early voting cannot be re-deployed for election day. This means that additional ballot marking devices for election day will be needed.

Another example was SBE's initial plan to procure separately ballot on demand printers for early voting centers. During the procurement process, SBE learned the capabilities of ES&S' ExpressPass printer. When ES&S was awarded the contract, SBE compared the proposed ExpressPass printer against the intended ballot on demand printers and determined that using the ExpressPass printer for early voting would be a better option in cost, space, and logistics than ballot on demand printers.

Ballot costs were not included in the FY2016 budget because SBE's Budget Department assumed that the ballot line item in the new voting system budget included ballots for the 2016 Primary Election and therefore, did not include a second line item for ballots. Because the ballot line item in the new voting system budget includes ballots for only the October

2015 mock election, there is currently no funding in the FY 2016 budget for ballots for the 2016 Primary Election.

6. *SBE should provide an update on the inventory system procurement and procurement of other related equipment (such as booths, carts, and servers).* (page 22)

As noted in DLS' analysis, SBE's inventory system procurement was cancelled to due cost concerns. After cancelling the procurement, SBE issued two Purchase Order Requests for Proposals. The first request is for a software inventory system, and the second request is for the hardware barcode scanners. SBE will use the scanners to capture and record SBE's assets. An award is expected by mid-March 2015.

SBE has procured a central warehouse to receive and test the new voting system and house the current system until after the 2016 elections. At its December meeting, the Board of Public Works approved the contract, and after several weeks of customizing the facility, SBE now has possession of the warehouse. SBE is currently procuring the additional equipment, supplies, and services, such as telecommunications and alarm and monitoring systems.

To implement the new voting system, SBE will need to procure additional equipment. Upcoming procurements include:

1. Ballot Bins: SBE expects to distribute this procurement in March.
2. Booths: SBE has submitted to the Department of General Services an Invitation for Bid (IFB) to solicit bids.
3. Carts: SBE has defined the specifications for the carts and will be submitting to the Department of General Services an IFB shortly.
4. ExpressPass Printers: SBE expects to distribute this bid by mid-April.
5. Servers: Discussions are on-going about how the network for the new voting system will be set up. When decisions about the network set up have been made, SBE will initiate the appropriate procurement.
6. Thumb Drives: While thumb drives were included in the voting system contract, the contract did not provide for back-up thumb drives for each optical scan unit and spares. SBE expects to distribute this procurement in March.
7. Voter Outreach: SBE's draft Request for Proposals is currently being reviewed by the Department of Budget and Management and is expected to be released in February or March.

SBE will review and where necessary, update several existing contracts. For example, SBE's existing transportation contract may need to be amended if the specifications of the new voting system change the transportation plan. Similarly, SBE's current contracts for printing ballots include only ballots for absentee and provisional ballots. With the new voting system, there are new ballot specifications and the required quantities will dramatically increase.

7. *SBE should comment on the implementation timeline for the new voting system, including when the State will begin receiving the equipment and the timeline for revising regulations and procedures.* (page 22)

Attached to this memorandum is an updated timeline for the implementation of the new voting system, including the estimated timeframe for receiving the new voting system, reviewing and updating regulations, and drafting and reviewing procedures.

8. *SBE should update the committees on the status of the corrective actions for these nonrepeat audit findings.* (page 31)

Since the last audit, SBE has worked diligently to address the findings identified by the Office of Legislative Audits (OLA) and appreciates DLS' recommendation to release the withheld funds. A status of each nonrepeat audit finding is provided below.

Finding #2 –SBE did not modify the voter system support services contract when the contract's scope was significantly reduced and did not submit contract modifications to the Board of Public Works.

As noted in the SBE's response to the Legislative Audit Report, SBE experienced during this audit period a turnover in finance and procurement personnel. For about ten months, SBE's procurement officer position was vacant. While procurement activity obviously continued, the procurement process suffered due to a lack of a dedicated resource and specialized procurement knowledge. Since February 2011, SBE has had the same procurement officer who has formalized procurement requirements and now thoroughly understands the State's procurement laws.

Since this audit period, all contract modifications have been properly exercised. For example, SBE submitted to the Department of Information Technology (DoIT) a request for a contract modification for major IT contract, and the Board of Public Works subsequently approved the modification. Similarly, contract extensions and work orders for CATS II contracts were approved through the appropriate control agency.

All internal procurement documents have been updated to include control agency approval, contract modifications, change orders, and work orders. SBE's procurement officer reviews all contract modifications and where appropriate, obtains approval from the appropriate control agency.

SBE is collecting the required documents and working with DoIT to obtain retroactive approval for the contract modifications with the prior voting system support vendor. Once the documents are complete, SBE will request that DoIT present at an upcoming Board of Public Works meeting the retroactive approval.

Finding #3 – SBE had not established internal controls over purchases and did not always comply with sole source procurement regulations.

SBE's updated internal controls over purchasing transactions have been implemented to ensure that all purchasing transactions are properly reviewed and approved. Each procurement has a separate folder that includes all procurement and bid information, recommendation for award, and the agency's procurement checklist capturing the review and when appropriate, approval by all individuals in the internal approval path.

SBE's Procurement Officer reviews each request for a sole source procurement to evaluate whether the sole source request is appropriate under the State's procurement laws and, if so, requires a written explanation justifying the request for this type of procurement. SBE's Procurement Officer, the State Administrator, and if applicable, SBE's control agency for the procurement must approve the sole source procurement. This review and approval of a request for sole source procurement has been incorporated into SBE's procurement checklist.

SBE requested that the Department of Budget and Management's (DBM) Audit Compliance Unit validate the agency's actions with respect to this finding. DBM's representatives reviewed SBE's procurement checklist and current contracts and found that all of SBE's major contracts were competitively bid and for the four sole source contracts, the reasons and documentation appeared sufficient to justify the sole source procurement.

Finding 6 – Non-cash credit adjustments to accounts receivable records were not adequately reviewed and approved.

SBE's Director of Budget and Finance uses the accounting system report to confirm that all non-cash adjustment transactions are accounted for and proper. Additionally, the Director reviewed for propriety the five non-cash credit adjustments and concluded that the adjustments were necessary because five invoices were generated in error.

Finding 8 – Potential security concerns over the Online Voter Registration System (OLVR) were noted in September 2012 by an independent security research team, but not properly addressed until fiscal 2014.

SBE continues to take steps to enhance the security of OLVR and other online voting services. SBE's prior independent security consultant suggested and reviewed security enhancements, and as noted in the audit report, OLA determined that SBE had responded to the suggested security enhancements. Since that security review, DoIT performed additional security testing on OLVR and other online voting services, and the testing found **no** issues related to OLVR or other online voting services.

Legislation was enacted in 2013 that required OLVR users to provide the last four digits of a user's social security number and "other information identified by the State Board that is not generally available to the public but is readily available to the individual." Within two months of the conclusion of the 2013 Legislative Session, SBE updated OLVR to reflect these changes and created a log for all OLVR transactions.

With data from the logs and historical data from prior OLVR transactions, SBE analyzes data from the transaction logs to identify any suspicious patterns of activity and has developed automated reports to identify any suspicious activity. SBE reviews the reports daily or weekly depending on the type of behavior and takes necessary steps to protect the integrity of the system.

In 2015, SBE will review and if necessary, update the log review process to reflect trends from the 2014 elections. In the current fiscal year, SBE will procure software to perform vulnerability assessments and database scans and will perform thorough security testing

after each software release. Testing will be performed regularly before each election, and SBE is exploring the possibility of hiring a security officer.

Finding 9 – SBE did not have an effective process to ensure that individuals serving a sentence for a felony conviction were removed from the voter registration database.

The Judiciary provides SBE with monthly files of individuals who have recent felony or misdemeanor convictions. Because Judiciary's list includes individuals whose convictions do not affect their voter registration, SBE reviews the file and manually deletes records with misdemeanor convictions and convictions in which no sentence was ordered.

At SBE's request, the Judiciary is revising its software to provide SBE only with the names of individuals who have been convicted of a felony. Last week, SBE received from Judiciary a sample file, and SBE is currently reviewing and testing the sample file. Judiciary anticipates implementing the new system in spring or summer 2015. Once implemented, SBE will no longer need to perform the manual review process to determine whether a conviction was for a felony or misdemeanor.

In the meantime, however, SBE has implemented an internal control process to verify that the names removed from Judiciary's list are only individuals convicted of a misdemeanor or convicted of a felony without a court ordered sentence. Before forwarding the file to the local boards for processing, the Director of Voter Registration verifies that the names manually deleted from list were appropriately removed. This process started with the July 2013 file from Judiciary and will continue until Judiciary's new system is implemented.

SBE no longer removes from the Judiciary's list a name because the sentence is complete. Under the new procedures, the names of these individuals are transmitted to the local boards of elections, and the local boards of elections contact the voter to confirm his or her eligibility.

In its audit report, OLA proposes that SBE use probation or parole information in maintaining the voter registration list. Election Law Article, § 3-504 is specific as to the sources and types of information that SBE is to rely on to maintain the statewide voter registration list and requires that the clerks of court "shall report the names and addresses of all individuals convicted, in the respective court, of a felony since the date of the last report." The statute does not otherwise direct the clerks to supply information on sentencing, probation, or parole, nor does any other law require, expressly or by implication, that SBE collect or use such information for voter registration purposes.

Sentencing information, and in particular probation and parole information, can be difficult to interpret from a summary and cannot be relied upon to determine with accuracy when a felony sentence has been fully served. For example, the summaries provided to SBE might indicate an official length of sentence but would not show how much of the sentence had already been served. Where multiple convictions are reported, it may be difficult to distinguish between consecutive and concurrent sentences or to know whether a violation of probation or parole relates to a felony or misdemeanor sentence. In short, expanding the use of sentencing information (including probation and parole information) for voter registration purposes would be administratively burdensome, susceptible to error, and of limited utility in improving the accuracy of the voter registration list. Whether the possible benefits of the

procedures proposed by OLA outweigh their certain and substantial costs is purely a question of policy, not a requirement under current law.

In a letter dated October 6, 2014, Thomas Barnickel, Legislative Auditor, acknowledged that the Election Law Article does **not** require the clerks of the court to provide sentencing information. While Mr. Barnickel states that SBE should seek to obtain this information, SBE believes that this should be an initiative of the legislature – not SBE. SBE's departmental legislation has historically been limited to technical and administrative issues, not policy matters.

Thank you for the opportunity to respond to the issues identified in the analysis. If you have any questions or need additional information during your deliberations, please do not hesitate to contact me or my staff.

New Voting System Replacement Project Major Milestone Timeline

as of Wednesday, February 18, 2015

| Item # | Major Milestone | Est. Start | Est. Finish |
|--------|--|-------------------------|-------------------------|
| 1. | Voting System Solution Hardware RFP Approved by BPW | December 2014 | December 2014 |
| 2. | Start of Voting System Solution Contract with ES&S ** | January 1, 2015 | January 1, 2015 |
| 3. | Start of Central Warehouse Contract *** | January 2015 | January 2015 |
| 4. | State regulations analysis, updates, reviews, approvals, and implementation | January 2015 | December 2015 |
| 5. | Move current voting equipment from each LBE to the Central Warehouse | March 2015 | June 2015 |
| 6. | ES&S new voting system equipment delivered to Maryland | March 2015 | June 2015 |
| 7. | Receipt and acceptance testing of new voting system equipment | March 2015 | June 2015 |
| 8. | Delivery of the new voting system from the Central Warehouse to the LBEs | April 2015 | July 2015 |
| 9. | Procurement of other major items (carts, booths, ExpressPass Printers, etc.) | February 2015 | June 2015 |
| 10. | Technical and User Training of Election Officials | April 2015 | May 2015 |
| 11. | Develop drafts of election procedures and documentation for Mock Election | January 2015 | October 2015 |
| 12. | Statewide Mock Election | October 15, 2015 | October 31, 2015 |
| 13. | Pilot Elections (Municipalities TBD) | November 2015 | November 2015 |
| 14. | Election Judge's Training | January 2016 | March 2016 |
| 15. | Presidential Primary Election Preparation | January 2016 | March 2016 |
| 16. | Presidential Primary Election Day | April 5, 2016 | April 5, 2016 |
| 17. | Between the Election Lessons Learned and Refinements | April 2016 | October 2016 |
| 18. | Presidential General Election Preparation | August 2016 | October 2016 |
| 19. | Presidential General Election Day | November 8, 2016 | November 8, 2016 |
| 20. | New Voting System Replacement Project Implementation Phase Completed | December 2016 | December 2016 |
| 21. | Current voting system equipment decommissioned and disposed | January 2017 | June 2017 |

** Base plus 2 two year options. Contract term would end in April 2017 if all options are executed.

*** Based plus 2 one year options. Contract term would end in January 2018 if all options are executed.