

STATE BOARD OF ELECTIONS

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Memorandum

To: Senate Budget and Taxation Committee
House Ways and Means Committee

From: Linda H. Lamone
State Administrator

Date: March 2, 2021

Subject: Response to Department of Legislative Services' FY 2022 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 2022 budget.

Before providing the requested comments and responses to the proposed budget language, I would like to address several items in the analysis.

FY 21 Deficiency Request

As noted in the analysis, the global COVID-19 pandemic dramatically impacted SBE's FY 21 budget and required a significant budget deficiency appropriation to offset special (county) funds. SBE is tracking the amount of special funds that will be credited if the FY 21 budget deficiency appropriation is approved and will provide the exact amount as soon as it is confirmed. The data used on page 6 of the analysis relied on outdated estimates from mid-2020, while the requested deficiency appropriation includes updated estimates. SBE estimates that the special fund reduction will be approximately \$7.3 million.

Cost Sharing between General and Special (County) Funds

Throughout the analysis, there are statements and implications that there have been changes to how costs are shared between the State and local boards of elections and that cost sharing is "discretionary" and "flexible." SBE has and will continue to follow State law, advice from the Office of the Attorney General, prior agreements, and past practice when allocating costs between general and special funds¹. Other than using federal funds in lieu of general or special funds, there have been **no** changes in how costs are allocated.

¹ Section 4 of Chapter 564 of the 2001 Laws of Maryland specifies that voting system costs are shared equally between the State and local jurisdictions. The Office of the Attorney General subsequently provided advice on what costs are considered "voting system costs." Voter registration system costs are governed by an agreement between SBE and the Maryland Association of Counties.

The draft analysis includes a recommended report on cost sharing, and if this report is adopted, SBE will provide the requested information about cost sharing. It, however, seems premature for DLS to conclude or imply that cost sharing practices have changed without knowing the governing laws, agreements, and past practices (as evidenced by the recommendation for the report).

Agency Election Management System (AEMS) (page 12 - 13 and 20)

Conducting elections during the global COVID-19 pandemic required changes to three elections in 2020 – the special general election for the 7th Congressional District, the 2020 Primary Election, and the 2020 General Election. Changes to how these elections were conducted required significant new development work which SBE prioritized over AEMS development work because AEMS was not being utilized for these elections. As a result, the AEMS implementation schedule was extended. SBE had originally planned to implement AEMS in December 2020. To align with MDVOTERS quarterly release schedule and allow for a system-wide mock election before integration, implementation was initially extended to March 2021 and subsequently further extended to April 2021 to allow for sufficient testing. Since this system is not necessary at this point in the election cycle, the extra month of testing reduces the likelihood of regression issues once it is integrated into MDVOTERS.

The current version of AEMS is well developed, and was successful in the parallel testing performed during the 2020 General Election. The pre-deployment testing is going well and is expected to meet the April 2021 date.

2022 Pollbook Project (page 13 - 15 and 21)

The analysis is generally concerned with three general areas - cost, timeline, and risks. Each area is addressed below.

Costs

Implementing a new election system, like the electronic pollbooks, will certainly impact local jurisdictions' budgets and the State's budget as SBE is paying half of the personnel and project management costs. There is a reduction in the FY 22 personnel and project management cost because SBE refined the personnel labor categories and expects to use less personnel than originally expected. The cost savings is also shared with the local jurisdictions. The costs to acquire and implement a major election system - not changes to the cost sharing allocation (described in detail above) - are responsible for the increase to the local jurisdictions' budget.

To enable local jurisdictions to plan appropriately, SBE shares with the local boards of elections estimated costs for all projects, including this project. Until the procurement process is complete, SBE can only share estimates based on market research and prior expenditures. SBE will notify the local boards of elections of actual costs as soon as that information can be made available.

Timeline

There is a well developed and detailed schedule for this project. The schedule is continuously reviewed to ensure that it is accurate and identifies tasks that can be advanced and the impact of any potential delays.

The analysis references the impact of financing through the State Treasurer's Office (STO) and the resulting payment schedule. If the pollbook solution is financed through STO, SBE intends to pay the selected vendor from SBE's budget and develop with STO a financing arrangement to replenish SBE's budget. SBE and STO have used this arrangement with other procurements, and SBE will update the Information Technology Project Request to reflect this plan.

As noted in Appendix 3 (page 21), work on this project started in FY 20. With any Major Information Technology Development Project, significant planning must occur and documents written before a project can proceed. Work in FY 20 included drafting and where required, receiving DoIT approval of the Information Technology Project Request, the project charter, project management plan, responsibility matrix, and pollbook solution requirements. Concurrent with this work and using the identified pollbook requirements, SBE, following DGS' Office of State Procurement's requirements and templates, started drafting the Request for Proposal. In addition, the project team identified short- and long-term staffing needs. These efforts establish a strong foundation for a major IT project and require significant resources.

Risks

While every project has risks, not all risks are the same. Some risks are easily resolved, while others - even those with an equivalent risk score - require more effort to manage. The analysis identifies several project risks and concerns but does not include how they are being managed and how the mitigation strategies reduce the risks.

1. Personnel - This risk is managed by supplementing SBE's existing personnel with project support from a project staffing contract. With the successful completion of the 2020 General Election, SBE's personnel are able to dedicate more time to this project, which further reduces the risk.
2. Funding - As stated above, SBE provided the local boards with estimated project costs so that local jurisdictions can plan accordingly. These estimated project costs are in accordance with the long-standing cost sharing agreement for electronic pollbooks. This risk is also mitigated by financing the solution over time.
3. Schedule - This risk is managed by a continuous review of the project schedule and identifying tasks that can be advanced and those that may be delayed. Tasks that are dependent on other tasks are identified, and there are tasks that can be performed concurrently with other tasks (e.g., training of local election officials while acceptance testing is on-going). While there are many tasks associated with this project, there is sufficient time to implement a new pollbook solution.²
4. Functionality - Although a parallel test is not an option for this type of solution, there are numerous other ways to test the functionality of the new pollbook solution. There will be extensive testing during the evaluation period, when the equipment is received, and during software customization. Similar to how election officials test a voting system, there will be a mock election, an accepted best practice for systems that cannot be tested via a parallel test, and SBE hopes that one or more municipalities will be able to

² For comparison, the implementation of the current pollbook solution took place over just over three months in 2006. The contract was approved at the June 7, 2006, meeting of the Board of Public Works. The pollbooks were used in the primary election held on September 12, 2006.

use the solution in 2021. As noted in the analysis, the contingency plan is to use the existing pollbook solution for the 2022 elections.

The analysis describes the decision to postpone the implementation of a new voting system as a staffing decision. See "Timeline Concerns" on page 14. While the ability of SBE and the local boards of elections to simultaneously implement a new voting system and a new pollbook solution and new district lines as a result of the redistricting and reapportionment process were important reasons for extending the current lease agreement for the voting system, staffing concerns were not the only reason. The voting system market is substantially the same as it was when the current voting system was procured, and the fiscal impact of implementing two new statewide systems would be significant for both the State and local jurisdictions.

2020 Joint Chairmen's Report - SBE Response (Appendix 1 - page 19)

The analysis commented on two of the reports SBE submitted, and I appreciate the opportunity to update the Committees on these reports.

- Throughout 2020, there was extensive and constant coordination and communication with the members of the State Board of Elections. Between July 1 (the date the report was filed) and December 31, there were eleven public meetings, weekly calls with the Chairman and Vice-Chairman, and other individual calls as needed. At no time while preparing for the 2020 elections were there requests from the board members for improved communication between the members and staff. As stated in the initial report, the members of the State Board can ask for improved communication if they believe it is necessary.
- With data from the Maryland Department of Public Safety and Correctional Services and assistance from advocacy organizations, SBE coordinated a pre-general election mailing of voter registration and mail-in voting information and forms to eligible individuals at detention centers in 21 counties.³ 2,700 individually addressed packets were mailed to eligible individuals in State correctional facilities, and 5,000 unaddressed packets were shipped to local correctional facilities for distribution to eligible individuals at that facility. Of the 2,700 individually addressed packets, over 1,100 were returned to SBE. This undeliverable rate was not unexpected since individuals in correctional facilities may have left the facility by the time the mailing arrived.

SBE is monitoring legislation in the 2021 Legislative Session that would provide greater access to voting for eligible individuals in correctional facilities and will continue to work with the Maryland Department of Public Safety and Correctional Services and advocacy organizations to educate individuals in correctional facilities about how to participate in the election process. Based on the return rate of individually addressed packets, providing the correctional facilities with unaddressed packets for distribution may be the

³ Individuals in detention centers are eligible to vote if they are awaiting trial or if they are serving time for a misdemeanor conviction. The local boards of elections in Charles, Garrett, and Montgomery Counties have existing agreements with county detention centers and regularly provide election materials.

most effective way to provide this information to eligible individuals.⁴ State and local election officials can provide additional packets if needed.

Issues Raised in the Department of Legislative Services' Analysis

The agency should comment on how it plans to proactively monitor progress of its MITDPs and how it will require satisfactory and timely performance from its vendors. (page 13)

SBE proactively monitors all of its projects and contracts. These activities include:

- Conducting regularly scheduled project schedule meetings to ensure that tasks and milestones are on schedule and if there are any changes to the schedule, address them early
- Conducting regularly scheduled risk management meetings for each project and as appropriate, escalating risks to senior management during agency-wide risk management meetings
- Conducting regularly scheduled meetings with DoIT's oversight managers and during these meetings, reviewing the project's schedule, milestones and risks
- Collaborating with other SBE projects to ensure that resources are appropriately scheduled and available to perform work
- Providing direction from senior management who provide oversight and guidance for the projects, including any legislative changes
- Performing contract management steps to monitor vendor's compliance to the agreed upon requirements and expectations
- Using all contractually availability remedies to address unsatisfactory or untimely performance of vendors

For the AEMS project, there are also monthly health assessments, bi-weekly planning for upcoming developments, and daily team meetings.

The agency should comment on how it is planning to ensure the successful implementation of the 2022 Pollbook Project while also preparing for the gubernatorial election. (page 14)

First, the project is managed according to best practices for project management with oversight from DoIT. The strong project management team is closely monitoring the project schedule, identifying risks and issues, and engaging the local boards of elections on the functionality and logistics of the new pollbook solution, while SBE's technical experts are engaged in the infrastructure and programming needs of the solution. The team recently brought on additional expertise to help with the software customization and project management, and interviews are underway to hire individuals for testing the various solutions and developing testing protocols when the new pollbooks arrive. A team of this size is necessary to plan and implement the new

⁴ Providing correctional facilities with unaddressed packets provides more flexibility in packet distribution. They can be distributed as eligible individuals come to the facility and re-distributed if an individual declines the information.

electronic pollbooks and as the election approaches, enables SBE resources to prioritize planning for the 2022 elections.

Second, the project schedule is continuously monitored and reviewed to ensure that the project is on schedule, identify opportunities to streamline the schedule and times when there may be a conflict with other projects, and best utilize SBE's and the local boards' time and efforts. For example, the project schedule was recently adjusted to reflect a shorter evaluation period due to the speed with which the evaluation team is reviewing the proposals received.

Lastly, comprehensive training is planned for SBE and the local boards. This includes robust, hands-on training and accompanying materials for election officials (including election judges), a mock election, and possible use of the new solution in upcoming municipal elections.

Department of Legislative Services' Recommendations (pages 16 - 17)

- 1. Adopt a narrative requiring a report on the cost-sharing structure with the local boards of elections.**

SBE agrees to provide the requested report. However, as stated above, the allocation of costs between special and general funds has not changed except to use federal funds to replace general and special funds.

- 2. Adopt narrative language requesting quarterly reports on all IT development projects. (pages 14 and 16 - 17)**

SBE agrees to continue providing quarterly reports for the IT projects classified as Major Information Technology Development Projects - AEMS and the 2022 Pollbook Project but requests that the committees be cognizant of the effort involved in these reports. SBE is willing to provide updates on these two projects but asks that the committees consider the scope of the reporting to avoid diverting critical SBE resources from project work to the extensive reporting requirements.

On page 15, DLS recommends quarterly reports on **"all IT development projects."** (Emphasis added.) SBE does not concur with the scope of this recommendation, as providing quarterly reports for all IT development projects is not required by DoIT and would require additional staff solely to manage this reporting requirement.