

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.