Audit Report

State Board of Elections

October 2023
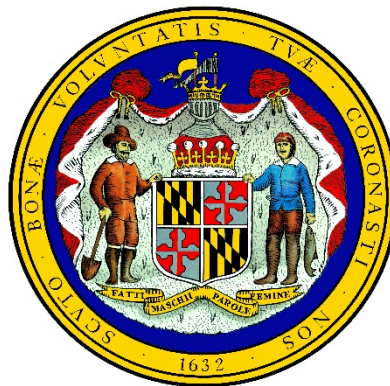
OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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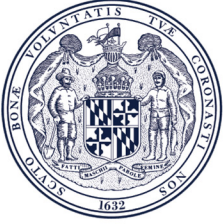
October 31, 2023

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the State Board of Elections (SBE) for the period beginning December 3, 2018 and ending July 31, 2022. SBE is responsible for managing and supervising elections and voter registrations in the State. SBE directs, supports, monitors, and evaluates the activities of each of the 24 local boards of election (LBE).

Our audit disclosed opportunities to strengthen SBE's existing oversight process of voter registration records (MDVOTERS) and its election oversight responsibilities. Specifically, SBE could enhance its procedures to fully identify deceased or duplicate voters in MDVOTERS and ensure local boards of election (LBEs) corrected errors in voter data identified during periodic reviews. For example, our analysis identified 2,426 potentially deceased individuals with active voter registration and 327 individuals with potential duplicate voter registrations. Additionally, our audit disclosed certain controls that could enhance the integrity of the automated vote tabulation process. Specifically, although SBE and our post-election testing did not identify material discrepancies in the voting results, we found that one employee was responsible for programming and distributing the electronic ballot databases to the 24 LBEs without an independent review to ensure the electronic ballot was accurate and consistent with the printed ballots.

Our audit also disclosed that SBE did not always timely refer potential improper voter activity to the Office of the State Prosecutor (OSP) for investigation and

prosecution. For example, for the 2020 general election, SBE identified 134 voters who voted more than once and 1,371 voters who attempted to vote multiple times (generally twice) but did not report these individuals to OSP until April 2022 (approximately 16 months after the election results were certified).

We noted a number of deficiencies with SBE's security and control over its information systems. However, in accordance with the State Government Article, Section 2-1224(i) of the Annotated Code of Maryland, we have redacted the findings from this audit report. Specifically, State law requires the Office of Legislative Audits to redact cybersecurity findings in a manner consistent with auditing best practices before the report is made available to the public. The term "cybersecurity" is defined in the State Finance and Procurement Article, Section 3.5-301(b), and using our professional judgment we have determined that the redacted findings fall under the referenced definition. The specifics of the cybersecurity findings were previously communicated to those parties responsible for acting on our recommendations.

Our audit also disclosed that SBE had not established adequate controls over the processing of payroll transactions and SBE did not always post Board meeting agendas on its website for the public at least 48 hours in advance of the scheduled meeting start time as required by the State's Open Meetings Act.

Finally, our audit included a review to determine the status of the three findings contained in our preceding audit report. For the non-cybersecurity-related finding we determined that SBE did not satisfactorily address this one prior finding and it is repeated in this report.

SBE's response to this audit is included as an Appendix B to this report. In accordance with State law, we have reviewed the response and, while SBE generally agrees with the recommendations in this report, we identified several significant instances in which statements in the response conflict or disagree with the report findings. In each instance, we reviewed and reassessed our audit documentation, and reaffirmed the validity of our finding.

In accordance with generally accepted government auditing standards, we have included general "auditor's comments" in Appendix A in relation to SBE's disagreements with the report findings. In relation to those significant instances in which SBE did not agree with specific information included in the report finding, we have also inserted "auditor's comments" within the SBE's response to explain our position. In accordance with our policy, we have also redacted any vendor names or products mentioned by SBE in this document. In addition,

consistent with State law, we have redacted the elements of SBE's response related to the cybersecurity audit findings.

We will advise the Joint Audit and Evaluation Committee of any outstanding issues that we cannot resolve with the SBE. Notwithstanding the aforementioned disagreements, we wish to acknowledge the cooperation extended to us during the audit by SBE, its agreement with our recommendations and willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

Gregory A. Hook, CPA
Legislative Auditor

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Background Information

Agency Responsibilities

The Election Law Article, Section 2-101 of the Annotated Code of Maryland, established the State Board of Elections (SBE) under the direction of a five-member Board appointed by the Governor, with the advice and consent of the Senate. In addition, in accordance with Section 2-201 of the aforementioned Article, the Governor appoints local boards of election within each of the State's 24 subdivisions. Each local board is charged with overseeing the conduct of all elections within its respective jurisdiction.

SBE is responsible for managing and supervising elections and voter registrations in the State. SBE directs, supports, monitors, and evaluates the activities of each local board. In addition, SBE administers sections of the Election Law Article that govern the receipt and expenditure of funds for election campaigns and administers the Public Financing Act, which provides for public financing of the campaigns of eligible gubernatorial candidates who elect to use such funds. SBE also serves as a depository for election and registration records, campaign financial reports, and other election information.

According to the State's records, during fiscal year 2022, SBE had 46 authorized positions and expenditures totaled approximately $49.2 million (see Figure 1 on the following page). SBE also processes the payroll for 20 of the 24 local boards of election, which during fiscal year 2021 totaled an additional $15.7 million, and is subsequently reimbursed for these costs by the respective local boards of elections.

Figure 1
SBE Positions, Expenditures, and Funding Sources

Full-Time Equivalent Positions as of June 30, 2022		
	Positions	**Percent**
Filled	43	93.5%
Vacant	3	6.5%
Total	**46**	

Fiscal Year 2022 Expenditures		
	Expenditures	**Percent**
Salaries, Wages, and Fringe Benefits	$5,054,254	10.3%
Technical and Special Fees	126,763	0.2%
Operating Expenses	44,056,966	89.5%
Total	**$49,237,983**	

Fiscal Year 2022 Funding Sources		
	Funding	**Percent**
General Fund	$22,705,664	46.1%
Special Fund	23,836,524	48.4%
Federal Fund	943,687	1.9%
Reimbursable Fund	1,752,108	3.6%
Total	**$49,237,983**	

Source: State financial and personnel records

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the three findings contained in our preceding audit report dated December 12, 2019. As disclosed in Figure 2 on the following page, for the non-cybersecurity-related finding, we determined that the finding was not satisfactorily addressed and it is repeated in this report.

Figure 2
Status of Preceding Findings

Preceding Finding	Finding Description	Implementation Status
Finding 1	SBE did not perform periodic documented reviews of access to the Statewide voter registration system (MDVOTERS) to ensure access capabilities were appropriately restricted.	Status Redacted[1]
Finding 2	SBE's oversight processes were not sufficient to ensure the accuracy of voter registration data recorded in MDVOTERS.	**Repeated** (Current Finding 1)
Finding 3	SBE had not established adequate application maintenance controls for developing, reviewing, approving, documenting, and placing program changes into production related to two SBE maintained application systems.	Status Redacted[1]

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[1] Specific information of the current status of this cybersecurity–related finding has been redacted from the publicly available report in accordance with State Government Article, Section 2-1224(i) of the Annotated Code of Maryland.

Findings and Recommendations

Statewide Voter Registration

Background

State and federal law require the State Board of Elections (SBE) to establish, maintain, and administer a Statewide voter registration database. The Statewide voter registration system (MDVOTERS) contains the State's official voter registration database and is separate from the Statewide electronic voting system. Employees from each of the State's 24 local boards of election (LBE) are primarily responsible for processing (adding, deleting, changing) voter registration data on MDVOTERS. SBE is responsible for maintaining MDVOTERS and ensuring that the LBEs are properly processing voter data.

In addition, SBE, in concert with 25 other states and the District of Columbia, takes part in an initiative to help ensure the accuracy of voter registration data. Under a multi-state compact, SBE provides certain voter information to the nonprofit Electronic Registration Information Center (ERIC)[2], including the name, date of birth, driver's license number, and last four digits of the social security number of each registered voter in Maryland. ERIC compares voter data from various sources, including voters recorded as deceased on the federal death registry, and provides state election officials with reports of potential ineligible voters, such as voters registered in multiple states. ERIC makes use of a third-party vendor to store and process the collected voter data.

According to SBE records, there were 4,148,651 active registered voters in MDVOTERS as of December 2022. During calendar year 2022, there were 295,572 new voters added to and 302,208 voters removed from the database.

Finding 1
SBE could enhance its procedures to fully identify deceased or duplicate voters recorded in MDVOTERS. Additionally, SBE did not ensure local boards of election corrected errors in voter data identified during periodic reviews.

Analysis

SBE could enhance its procedures to fully identify deceased or duplicate voters recorded in MDVOTERS. Additionally, SBE did not ensure LBEs corrected errors in voter data identified during periodic reviews.

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[2] States' membership in ERIC is currently in flux, as a number of states have taken actions to withdraw from the compact. SBE advised that it intends to continue ERIC membership.

<u>Procedures to Identify Potentially Deceased or Duplicate Voters Could be Enhanced</u>

We found that SBE's match of voter records to State death records were not as comprehensive as necessary to identify certain potentially deceased voters. For identifying potentially deceased voters in MDVOTERS, SBE only followed up on individuals that were exact matches (such as identical spelling and format of names) based on records of potentially deceased voters it receives from the Maryland Department of Health (MDH).[3] SBE could be investigating the MDH results of broader matching parameters, which would include both exact matches and results that are very close to certain user-defined parameters (called "fuzzy" matching). For example, "fuzzy" matching would provide match results that reflect John T. Smith on one data set and John Thomas Smith on the other data set. Furthermore, based on our inquiries into SBE's procedures to identify potentially deceased voters, SBE management advised that it determined that the information received by SBE from MDH was not complete as it did not include all individuals who died in Maryland.

We performed a comparison of MDVOTERS records as of December 15, 2022 to records we obtained from MDH of deceased individuals as of May 24, 2022 using "fuzzy" matching and identified 2,426 potentially deceased individuals with active voter registration. Our limited review of five of these individuals disclosed that four were deceased.

The current manual review conducted by the LBEs to identify duplicate voters does not appear to detect all duplicate voters and we believe that a periodic analysis of MDVOTERS could enhance SBE's procedure. When a new voter record is created, MDVOTERS will automatically determine if potential duplicate voter registration records exist. If the system identifies a potential duplicate, the corresponding LBE will be notified, and a manual review is performed by the LBE to determine if the new voter record should be merged with an existing record or should be considered a new record. However, we performed an analysis of MDVOTERS records as of December 15, 2022 to identify individuals with the same name and date of birth with different voter ID numbers. Our analysis identified 327 potential duplicate voter registrations. We reviewed five of these potential duplicate voter registrations with SBE management and confirmed that all five were duplicate voter registrations.

<u>SBE Did Not Ensure LBEs Corrected Errors in Voter Data</u>

SBE did not ensure LBEs corrected errors in voter data identified during periodic reviews. For example, SBE used data from ERIC to identify voters also

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[3] Additionally, SBE receives death records from ERIC every two months, which are uploaded into MDVOTERS for manual review by the LBEs.

registered in other states and voters recorded as deceased on the federal death registry. The results of these reviews were provided to the appropriate LBEs, which were responsible for correcting voter registration in MDVOTERS. In addition, LBEs were required to conduct monthly peer reviews of voter data entered by other LBEs. Our review disclosed that SBE did not ensure that errors identified by these periodic reviews were corrected by the LBEs.

- Our test of 14 LBE peer reviews performed during the period from October 2020 through August 2021 disclosed that, as of May 2022, the LBEs had not corrected 15 of the 19 identified errors that were outstanding for 240 to 483 days. For example, as of May 2022, one LBE had not removed a voter for 332 days after receiving notification of the voter's death.

- Our test of 10 SBE reviews performed during the period from July 2020 through October 2021 disclosed that SBE had not verified that the correction had been made by the LBE for 11 of the 13 identified errors that were outstanding from 117 to 398 days. For example, as of May 2022, one LBE had not obtained support for the reactivation of a voter's registration 329 days after the review.

A similar finding regarding the accuracy of voter registration data was commented upon in our preceding audit report. In response to our prior report, SBE indicated that it had established a process to implement the recommended corrective action in August 2019. Specifically, SBE advised that if LBEs did not perform corrective action timely, SBE would make the correction on the LBE's behalf and notify the appropriate Election Director, local board members, and the State Administrator. However, as noted above, the established process was not performed, and the review of voter registration data remained inadequate.

Recommendation 1
We recommend that that SBE
a. **enhance its procedures as noted above to fully identify deceased and duplicate voters recorded in MDVOTERS; and**
b. **ensure that the LBEs have taken the appropriate corrective actions to update voter registration records in MDVOTERS for results of various reviews performed by the LBEs and SBE, including those noted above (repeat).**

Election Oversight

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Finding 2
Although testing did not identify material discrepancies in the voting results, we identified opportunities to enhance the integrity of the automated vote tabulation process.

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Analysis
Although SBE and our post-election testing did not identify material discrepancies in the voting results, we identified certain controls that could enhance the integrity of the automated vote tabulation process. Specifically, our review disclosed one employee was responsible for programming and distributing the electronic ballot databases to the 24 LBEs without an independent review to ensure the ballot as scanned and recorded in the database was accurate and consistent with the printed ballots.

The programming of the ballot is important because the system counts votes based on the location of the names on the ballot so discrepancies between the printed ballots and the electronic database could result in the wrong vote being counted. For example, if candidate A was listed before candidate B on the written ballot but reversed in the programming of the database used to record the scanned ballot results, it would result in the vote being credited to the wrong candidate.[4]

In accordance with State law SBE performed a post-election manual ballot tabulation audit for the 2020 general election and found no significant vote differences between the manual audit and the voting system results. In addition, our judgmental test of 50 ballots from 5 LBEs from the 2020 general election and the 2022 primary election did not identify variances between paper ballots and the electronic ballot databases used to program election equipment.

Recommendation 2
We recommend that SBE establish an independent supervisory review of its programming and distribution of the electronic ballot database. We advised SBE on using existing personnel to establish an independent supervisory review.

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[4] Although SBE performed logic and accuracy testing of election equipment after electronic ballot databases were programmed and distributed to ensure that equipment was functioning properly, the testing did not compensate for the lack of supervisory review over the programming and distribution of the electronic ballot database.

Finding 3
SBE did not always timely refer potentially improper voter activity to the Office of the State Prosecutor (OSP) for investigation.

Analysis
SBE did not always timely refer potentially improper voter activity to OSP for investigation. SBE conducts various reviews to identify improper voter activity, including voters who voted or attempted to vote multiple times and votes cast after voters were deceased. SBE forwards the results of its review to OSP for further investigation and possible prosecution.

For the 2020 general election, SBE identified 134 voters who successfully voted multiple times and 1,371 voters who attempted to vote multiple times.[5] Additionally, for the July 2022 primary election, SBE identified 4 individuals who successfully voted multiple times and 263 voters who attempted to vote multiple times. While SBE timely referred the voters from the July 2022 primary election to OSP, SBE did not refer the individuals it identified in the 2020 general election to OSP until April 2022 (approximately 16 months after the election results were certified). SBE explained the untimely referral was due to personnel turnover.

At the time of our audit, State law provided that OSP had three years from the date when the election offense occurred to pursue prosecution for violations of State voting statutes, although there is no criteria for the timing of SBE reporting of a potential election offense to the OSP. In our opinion, more timely reporting by SBE would provide OSP sufficient time to investigate and pursue action against individuals improperly voting.

Recommendation 3
We recommend that SBE, in conjunction with the OSP, establish guidance for timely referral to the OSP of potentially improper voter activity.

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[5] Although we have used "multiple", in the overwhelming number of cases, the individuals voted or attempted to vote twice.

Information Systems Security and Control

We determined that the Information Systems Security and Control section, including Findings 4 through 6 related to "cybersecurity", as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore are subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Consequently, the specifics of the following findings, including the analysis, related recommendations, along with SBE's responses, have been redacted from this report copy.

Finding 4
Redacted cybersecurity-related finding.

Finding 5
Redacted cybersecurity-related finding.

Finding 6
Redacted cybersecurity-related finding.

Payroll

Finding 7
SBE had not established adequate controls to ensure the propriety of payroll transactions, including adjustments to employee leave balances.

Analysis
SBE had not established adequate controls over the processing of payroll transactions on the Statewide Personnel System (SPS). According to the State's records, payroll expenditures totaled approximately $21.1 million during fiscal year 2022, which includes $15.9 million of payroll expenditures for the 20 LBEs whose payrolls are processed by SBE.

- SBE did not ensure that all employees recorded their time in SPS and that designated supervisors approved the reported time prior to processing payroll. We judgmentally selected 17 employees' time entries from 19 different pay periods and found 5 employees who did not record all their time in SPS during

11 pay periods.[6] For example, one employee did not record time in SPS for 3 pay periods. In addition, the designated supervisor did not approve the time recorded by 9 employees over 7 pay periods. We noted that for 6 of these 9 employees, 224 leave hours (personal, annual, and sick) used during the pay periods tested were not reduced from the employee's leave balance.

- SBE did not use available system output reports to ensure leave adjustments in SPS were proper. During the period of December 3, 2018 through July 31, 2022, SBE processed 456 leave adjustments (such as leave bank enrollments) that increased employee leave balances by 5,523 hours and decreased leave balances by 7,423 hours. Our test of 10 leave adjustments processed by SBE disclosed 4 adjustments that did not appear to be justified or proper. For example, 2 adjustments tested included 107 hours of parental leave awarded to 2 employees valued at $1,660 that exceeded the 555 hours parental leave allowed by State law.

- SBE did not verify that the total payroll, as reflected in the Comptroller of Maryland's Central Payroll Bureau (CPB) payroll registers, agreed with SPS payroll summary reports reflecting the amount that should have been paid based on each employee's approved work time and salary information. The verification is necessary because certain unique SPS design features often result in differences between the CPB and SPS. For example, CPB payroll registers only reflect activity processed during the particular pay period while SPS payroll summary reports will reflect all activity relevant to the pay period irrespective of when the transactions were processed. We compared SBE's CPB payroll registers with the SPS payroll summary report for the pay period ending January 25, 2022 and did not identify any unexplainable differences.

Recommendation 7
We recommend that SBE
a. **ensure that all employee time is properly recorded by employees and approved by designated supervisors prior to payroll processing;**
b. **independently verify leave balance adjustments to ensure that only authorized adjustments have been processed and take appropriate corrective action when errors are noted, including those noted above; and**
c. **reconcile total payroll as reflected in CPB payroll registers each pay period with SPS payroll summary reports, investigate any differences, and ensure that those reconciliations are documented.**

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[6] The employees were judgmentally selected from the Report of CPB earnings by pay period and the SPS Reporting of unapproved time and time off.

Board Meetings

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Finding 8
SBE did not always post Board meeting agendas on its website at least 48 hours in advance of the scheduled meeting start time as required by the State's Open Meetings Act.

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Analysis
SBE did not always post Board meeting agendas on its website at least 48 hours in advance of the scheduled meeting start time as required by the Open Meetings Act. The Open Meetings Act of 2020 requires a number of agencies, including SBE, to (publicly) share meeting agendas online at least 48 hours in advance of convening in order to help improve transparency and accountability. Our Fraud Investigation Unit received a referral to our fraud, waste, and abuse hotline regarding concerns with the untimely public posting of SBE agendas in advance of scheduled meetings. As a result, we reviewed SBE's website for its posting of agendas for the six regular meetings held between January 2022 and August 2022.

Our test disclosed three meetings in which SBE posted the related agenda less than 48 hours in advance of the meeting's start time as required by the Act. Specifically, SBE posted these agendas 1.5 hours, 26.5 hours and 45.5[7] hours in advance of the meeting's scheduled start time instead of the required 48 hours. SBE advised us that the posting delays were due to additional time needed to prepare the agenda or human error.

Recommendation 8
We recommend that SBE comply with the Open Meetings Act and publicly post all meeting agendas on its website at least 48 hours in advance of the meeting starting time.

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[7] These times reflect the posting of the original agenda, certain of which were subsequently updated with the final agenda posted closer to the meeting. For example, the aforementioned agenda posted 45.5 hours before the meeting was subsequently updated with the final agenda posted only 5.5 hours before the meeting. The Act makes no provision or allowance for posting a "final" agenda less than 48 hours before the meeting; in other words, the final agenda should be posted 48 hours prior to the regularly scheduled meeting.

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the State Board of Elections (SBE) for the period beginning December 3, 2018 and ending July 31, 2022. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine SBE's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included voter registration, election oversight, procurements, disbursements, and payroll. We also determined the status of the findings included in our preceding audit report.

Our audit did not include an evaluation of internal controls over compliance with federal laws and regulations for federal financial assistance programs and an assessment of SBE's compliance with those laws and regulations because the State of Maryland engages an independent accounting firm to annually audit such programs administered by State agencies, including SBE.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of December 3, 2018 to July 31, 2022, but may include transactions after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of SBE's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the

transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit. We also extracted data from the MDVOTERS voter registration database, the Maryland Department of Health's Vital Records database, and the Administrative Office of the Courts for the purpose of performing certain tests and to compare these data sets for testing purposes. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during the audit. Finally, we performed other auditing procedures that we considered necessary to achieve our objectives. The reliability of data used in this report for background or informational purposes was not assessed.

SBE's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. As provided in *Government Auditing Standards,* there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to SBE, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect SBE's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to SBE that did not warrant inclusion in this report.

State Government Article Section 2-1224(i) requires that we redact in a manner consistent with auditing best practices any cybersecurity findings before a report is made available to the public. This results in the issuance of two different versions of an audit report that contains cybersecurity findings – a redacted version for the public and an unredacted version for government officials responsible for acting on our audit recommendations.

The State Finance and Procurement Article, Section 3.5-301(b), states that cybersecurity is defined as "processes or capabilities wherein systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation". Based on that definition, and in our professional judgment, we concluded that certain findings in this report fall under that definition. Consequently, for the publicly available audit report all specifics as to the nature of cybersecurity findings and required corrective actions have been redacted. We have determined that such aforementioned practices, and government auditing standards, support the redaction of this information from the public audit report. The specifics of these cybersecurity findings have been communicated to SBE and those parties responsible for acting on our recommendations in an unredacted audit report.

SBE's response to our findings and recommendations is included as an appendix to this report. Depending on the version of the audit report, responses to any cybersecurity findings may be redacted in accordance with State law. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise SBE regarding the results of our review of its response.

APPENDIX A

The State Board of Elections (SBE) has indicated disagreement with the factual accuracy of several findings in this report, and in some cases, indicates that we mischaracterized or did not support the issues being presented in the finding. Despite these disagreements, SBE has agreed to implement the related recommendations. While we welcome and appreciate SBE explanations and justifications for the deficiencies to provide added insight, as noted below the information provided by SBE did not refute our findings.

For each SBE disagreement, we reviewed and reassessed our audit documentation and reaffirmed the validity of our findings and related recommendations. Contrary to the assertions made in the response, the findings contained in this audit report are factually accurate, fairly presented, and properly supported in accordance with government auditing standards. In relation to those significant instances in which SBE did not agree with specific information included in the report finding, additional details to explain our position are included in the auditor's comments within SBE's response.

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

Michael G. Summers, Chairman
William G. Voelp, Vice Chairman
Carlos Ayala
Janet Millenson
Yaakov "Jake" Weissmann

Jared DeMarinis
State Administrator

Katherine Berry
Deputy Administrator

October 6, 2023

<u>Via Electronic Mail</u>

Gregory A. Hook, CPA
Legislative Auditor
Department of Legislative Services
351 West Camden Street
Baltimore, MD 21201

Dear Mr. Hook:

    Thank you for the opportunity to respond to the Legislative Auditor's audit report for the period from December 3, 2018, through July 31, 2022. Enclosed is SBE's response to the audit report.

    If you have any questions, please feel free to contact me.

      Sincerely,

Jared DeMarinis

      Jared DeMarinis
      State Administrator

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State Board of Elections

Agency Response Form

Statewide Voter Registration

Finding 1
SBE could enhance its procedures to fully identify deceased or duplicate voters recorded in MDVOTERS. Additionally, SBE did not ensure local boards of election corrected errors in voter data identified during periodic reviews.

We recommend that SBE

a. **enhance its procedures as noted above to fully identify deceased and duplicate voters recorded in MDVOTERS; and**

b. **ensure that the LBEs have taken the appropriate corrective actions to update voter registration records in MDVOTERS for results of various reviews performed by the LBEs and SBE, including those noted above (repeat).**

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	<u>Procedures to Identify Potentially Deceased or Duplicate Voters Could be enhanced.</u> While SBE agrees to enhanced procedures to identify deceased and duplicate voters, it maintains that the current processes are comprehensive and effective and notes that OLA's characterization of the current process and the figures in the discussion notes are mischaracterized. Moreover, the manual review required to enhance procedures will require additional staff given the current workload of the unit. This response addresses each of the areas separately below: <u>Potentially Deceased Voters</u> OLA states that "for identifying potentially deceased voters in MDVOTERS, SBE only followed up on individuals that were exact matches (such as identical spelling and format of names) based on records of potentially deceased voters it receives from ERIC and the Maryland Department of Health (MDH)." This is inaccurate. SBE follows up on all records received to determine if they are a match to a voter in the voter registration database. In determining whether a match exists, SBE requires an exact match on date of death, date of birth, and first name. A fuzzy match is performed on last name. OLA next states that its proposed solution "would provide match results that reflect John T. Smith on one data set and John Thomas Smith on the other data set."

This statement implies that SBE logic would currently not provide a match. However, current matching logic would provide such a match.

OLA identified 2,426 potentially deceased voters with dates of death from 1984 to the end of the audit period - a 38-year window. SBE reviewed the information provided for each of the 2,426 voters by first searching MDVOTERS to ensure that the voter was not canceled. If the voter was still active, the information was searched in the MDH Interface in MDVOTERS. If an exact match was not found, the date of death or date of birth was used to complete the search. The MDH record that matched either date of death or date of birth was compared against the voter record to determine if the records were for the same person. If the voter record and death record had a "fuzzy match" on one name (potential misspelling, special character, different middle name or initial) but the same first or last name, same date of birth, and same date of death, the voter was identified as a match.

During this process to review all 2,426 records, SBE did not locate information for 761 voters on the MDH interface. This means that MDH did not provide SBE death records for 761 of the voters. Upon researching these voters, it was determined that the voters died in Maryland but listed another state as their residence on their death certificate. Both OLA and MDH acknowledge that this data was not sent to SBE and, currently, cannot be provided to SBE by MDH due to agency policy. However, OLA has issued a finding holding SBE accountable for not processing records that it has not received. Furthermore, SBE requested that OLA provide the source of this data several times so that it could ensure proper follow up, but this information has not yet been provided.

In addition, three of the potentially deceased voters were not deceased, as the information identified by OLA was not a match for a voter in the MDH interface. This information was provided to OLA, yet the voters remain in the finding. If these results are removed from the number of records for which death records were received but not processed, the number of records received but not processed is 1,662 records.

In order to quantify the effectiveness of SBE's current matching process, these numbers must be viewed in context. One thousand fifty-nine (1,059) of all records provided by OLA had dates of death during the audit period. All other dates of death preceded the audit period. SBE did not receive death information from MDH for 150 individuals and one was a duplicate, leaving 908 voters that were not canceled during the audit period. In context, during the same time the LBEs canceled

145,931 voters due to receiving death notices from all sources - ERIC, MDH, reports of family members, etc. The 908 potentially deceased voters that were not canceled account for 0.62% of all voters that should have been removed. Regarding the voters that were not canceled after receiving notification of death, none of these voters were an exact match to an active voter in our database. Rather, all had either a special character in their name or different spelling of their first or last name that prevented MDVOTERS from identifying the voter as a match.

Given this percentage of successful cancellation of deceased voters, SBE maintains that the current procedures are sufficient to identify deceased voters and cancel them. However, noting that there is room for improvement, SBE will make the following changes to its processing of MDH death records. SBE will implement changes to the matching process to include non-exact matches on first or last name due to hyphens or apostrophes. These will be sent to the LBEs for processing as normal. In addition, SBE will create a monthly list of all deceased residents who are not forwarded to LBEs for processing, because they do not match a voter in MDVOTERS. Additional SBE staff has been requested to facilitate a manual "fuzzy match" analysis on those records.

Duplicate Voters
SBE disagrees with the finding that "a periodic analysis of MDVOTERS" is not completed by SBE. SBE uses a multiple step process to identify potential duplicate voters. As described in the finding, the MDVOTERS system has logic that identifies potential duplicate voters as a duplicate when a new voter record is created. If a duplicate voter is erroneously entered into MDVOTERS, there are several period reviews that identify duplicate entries. SBE receives ERIC reports every two months that identify potential duplicate voters. Prior to each election, SBE staff exports from MDVOTERS a list of all registered voters to load into the electronic pollbooks that are used at voting locations. These processes are so effective that OLA identified only 268 duplicate records of 4,148,651 active voter records in the SBE database. This number represents 0.00645% of all active registered voters.

OLA identified 327 pairs of records as potential duplicates. SBE reviewed all duplicate records using the following process: each of the 327 pairs of records provided were compared using information in MDVOTERS to ensure that the records were the same voter.

SBE found that fifty-nine of the 327 records had previously been

identified and corrected after the close of the 2022 General Election. Since records cannot be merged during an election, there was a backlog that was alleviated between December 2022 and March 2023, and none of the pairs of records contained duplicate voting history. This left 268 duplicate records - 0.00645% - of 4,148,651 active voter records in MDVOTERS. We have provided OLA with this information, but the number has not been adjusted in the findings. Furthermore, SBE lacks sufficient information to respond to the finding regarding five sample cases. The cases were not identified, such that SBE could review the records to determine.

SBE Did Not Ensure LBEs Corrected Errors in Voter Data
OLA found that SBE did not ensure that the LBEs corrected errors in voter data identified during periodic reviews. Specifically, 15 of 19 identified errors from peer reviews were not corrected and eleven of 13 identified errors from SBE reviews were not corrected.

Each month, the LBEs perform peer reviews of changes made to critical data in MDVOTERS. Each LBE is assigned another LBE and using procedures and requirements set out by SBE, reviews certain transactions performed by that LBE. SBE randomly selects four of the peer reviews to audit monthly in a quality assurance review. If an LBE fails to follow the proper procedure in making changes to critical data in MDVOTERS, an exception is noted by SBE. SBE notifies the LBEs of exceptions discovered during the SBE quality assurance review and requires the LBE to submit a corrective action plan, with an estimated completion date.

During the audit period, the LBEs reviewed 618,977 transactions using the peer review process. SBE audited 10,748 of these transactions and identified 738 exceptions. Of the 738 exceptions, 712 were corrected by the LBE using the process described above. There were 26 errors that were not corrected, which accounts for .0042% of all transactions, 0.24% of audited transactions, and 3.52% of all exceptions identified during the review process. That said, the process will be updated to ensure that 100% of identified exceptions are corrected. The new process is described below in the Recommendations portion of this discussion note.

Auditor's Comment: Although SBE agrees with the audit recommendations, SBE indicated that the Office of Legislative Audits (OLA) did not provide the source of its data used to identify deceased voters. Contrary to these assertions, during the course of the audit, OLA provided SBE with the deceased voter information as well the source of the information on which the finding was based. OLA also referred SBE to appropriate

personnel at the Maryland Department of Health (MDH) from which OLA obtained the information. Consequently, it remains for SBE to work in conjunction with legal counsel and MDH to obtain a complete record of deceased individuals or determine if any statutory limitations exist preventing MDH from providing a complete record.

SBE also stated that our analysis included individuals with dates of death that preceded the current audit period. As noted in the "Audit Scope, Objectives, and Methodology" section of our audit report, activity subject to audit may extend beyond the audit period. Regardless, we contend that deceased individuals should be promptly removed from voter registration records upon identification especially if they have been deceased for extended periods.

SBE further disagreed with our finding related to deceased voters and stated that the current SBE match logic would identify deceased individuals who are contained on voter records such as the example "John T. Smith and John Thomas Smith" noted in our finding.   However, SBE's current procedures require exact match of first name, date of death, and date of birth. These procedures would not produce a match result as the first name field in the two data sets was formatted differently. Specifically, one data set included first name and middle initial within the first name field while the other data set has a separate middle name field. The current match does not use "fuzzy" match on the first name field, so "John T." will not match "John".

SBE also indicated that our counts related to potentially deceased voters and duplicate voters included errors. We provided summaries of all records included in our audit finding to SBE personnel for review. Our audit staff worked extensively with SBE personnel to ensure our analysis was accurate and the audit report reflects adjustments made based on supporting documentation provided by SBE to OLA. If there are errors remaining, of which we know of no specific example, it is directly due to inaccurate or unreliable information provided us by SBE.

Recommendation 1a	Agree	Estimated Completion Date:	ongoing
Please provide details of corrective action or explain disagreement.	Agree. Additional SBE staff has been requested to facilitate a manual "fuzzy match" analysis on those records, as the workload exceeds current agency resources.		

	1. Death Records: SBE has implemented manual "fuzzy matching" criteria to improve upon its already existing "fuzzy matching" logic and comprehensive review process. SBE created a monthly list of all deceased residents who are not forwarded to LBEs for processing, because they do not match a voter in MDVOTERS. Additional SBE staff has been requested to facilitate a manual "fuzzy match" analysis on those records, as the workload exceeds current agency resources. The request of a new position is dependent on the outcome of the process to request and fund a new position. SBE has initiated this process. 2. Duplicate Voters: SBE will continue to use the existing "fuzzy matching" criteria, given the success of identifying duplicate records. SBE will supplement the existing list maintenance processes with a quarterly review of the Potential Duplicate Voters Report. Implementation of the new quarterly review will commence in the 4th quarter of calendar year 2023.

Recommendation 1b	Agree	**Estimated Completion Date:**	completed
Please provide details of corrective action or explain disagreement.	SBE has changed the critical oversight process to ensure all identified exceptions are corrected. The data audit summary report will continue to be forwarded to the LBE Election Director and Deputy Director when complete. SBE will make corrections during the review and note the same in the summary report.		

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Election Oversight

Finding 2
Finding 2 **Although testing did not identify material discrepancies in the voting results, we identified opportunities to enhance the integrity of the automated vote tabulation process.**

We recommend that SBE establish an independent supervisory review of its programming and distribution of the electronic ballot database. We advised SBE on using existing personnel to establish an independent supervisory review.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.	We agree with the finding. In February 2023, we established an independent supervisory review of the programming and distribution of the ballot database. This review will be used in all future elections.		
Recommendation 2	Agree	**Estimated Completion Date:**	2/1/2023
Please provide details of corrective action or explain disagreement.	Established the ElectionWare Database & Paper Ballot Verification Policy		

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Finding 3
Finding 3 **SBE did not always timely refer potentially improper voter activity to the Office of the State Prosecutor (OSP) for investigation.**

We recommend that SBE, in conjunction with the OSP, establish guidance for timely referral to the OSP of potentially improper voter activity.

Agency Response		
Analysis		
Please provide additional comments as deemed necessary.	OLA states that "for the 2020 general election, SBE identified 134 voters who successfully voted multiple times and 1,371 voters who attempted to vote multiple times." This number of voters who attempted to vote multiple times is not accurate. A scheduling error in MDVOTERS assigned an additional voting credit to 28 Harford County voters. These voters' records have been corrected. The number of voters who voted more than once is 106, not 134. The totals for the 2022 elections are accurate. However, it should be noted that the review is ongoing and supplemental information is being reviewed and provided to OSP on a rolling basis.	
Recommendation 3	Agree	**Estimated Completion Date:** 12/31/2023
Please provide details of corrective action or explain disagreement.	SBE agrees generally with this recommendation but notes that the review process depends on receiving the LBE's analysis and documents. Given these limitations, SBE will keep OSP informed on the estimated timeline for submitting this information.	

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Information Systems Security and Control

The Office of Legislative Audits (OLA) has determined that the Information Systems Security and Control section, including findings 4 through 6 related to "cybersecurity", as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore are subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Although the specifics of the following findings, including the analysis, related recommendations, along with SBE's responses, have been redacted from this report copy, SBE's responses indicated agreement with the findings and related recommendations.

Finding 4
Redacted cybersecurity-related finding.

Agency Response has been redacted by OLA.

Finding 5
Redacted cybersecurity-related finding.

Agency Response has been redacted by OLA.

Finding 6
Redacted cybersecurity-related finding.

Agency Response has been redacted by OLA.

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Payroll

Finding 7
SBE had not established adequate controls to ensure the propriety of payroll transactions, including adjustments to employee leave balances.

We recommend that SBE
a. **ensure that all employee time is properly recorded by employees and approved by designated supervisors prior to payroll processing;**
b. **independently verify leave balance adjustments to ensure that only authorized adjustments have been processed and take appropriate corrective action when errors are noted, including those noted above; and**
c. **reconcile total payroll as reflected in CPB payroll registers each pay period with SPS payroll summary reports, investigate any differences, and ensure that those reconciliations are documented.**

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	OLA's analysis includes unclear statements about their findings related to the 17 employees' time entries tested as part of the audit. The statement "5 employees [] did not record all their time in SPS during 11 pay periods" could be read to mean that each of the five employees did not record time entries in eleven pay periods (which would be incorrect) or there were eleven pay periods when the five employees did not record time entries (which would be correct). Similarly, the statement that supervisors "did not approve the time recorded by 9 employees over 7 pay periods" could be read to mean that 9 employees' time was not approved for 7 pay periods (which would be incorrect) or there were 7 pay periods when 9 employees' time was not approved (which would be correct). In OLA's analysis, it states that used leave hours were not reduced from the employee's leave balance. Once OLA identified this issue, we corrected the employee's leave balances.

> **Auditor's Comment**: SBE's response claims that some statements in our analysis are unclear. During the audit, we met with SBE to clarify the statements and it was our understanding that they were understood by SBE at the time. Nevertheless, to again clarify, we judgmentally selected time entries for 17 employees over 19 different pay periods and determined that 5 employees did not record their time in 11 pay periods. Additionally, the 224 leave hours used during the pay periods tested which were not reduced from the leave balance related to 6 of the 9 employees that we identified as not having supervisory review of the recorded time.

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Recommendation 7a	Agree	**Estimated Completion Date:**	Every 2 weeks
Please provide details of corrective action or explain disagreement.	In September 2022, we implemented new timesheet procedures. Employees who have not submitted and supervisors who have not approved a timesheet by the end of the pay period are sent email reminders. This procedure ensures that all timesheets are submitted and approved by the end of the pay period.		
Recommendation 7b	Agree	**Estimated Completion Date:**	complete
Please provide details of corrective action or explain disagreement.	The new leave adjustment procedure was implemented in November 2022. The procedure ensures that there is documentation of all leave adjustments. Leave adjustments are now handled by two individuals, with one person entering into SPS the adjustment and the other person verifying that the information is authorized and accurate.		
Recommendation 7c	Agree	**Estimated Completion Date:**	complete
Please provide details of corrective action or explain disagreement.	In December 2022, we implemented a new reconciliation process for payroll. Each pay period, CPB's payroll registers are reconciled with the SPS's payroll summary reports ensuring there are no discrepancies. The documents are uploaded to a Smartsheet and signed by the individual who verified the information.		

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Board Meetings

<table>
<tr><td>Finding 8
SBE did not always post Board meeting agendas on its website at least 48 hours in advance of the scheduled meeting start time as required by the State's Open Meetings Act.</td></tr>
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We recommend that SBE comply with the Open Meetings Act and publicly post all meeting agendas on its website at least 48 hours in advance of the meeting starting time.

<table>
<tr><th colspan="2">Agency Response</th></tr>
<tr><td>Analysis</td><td></td></tr>
<tr><td>Please provide additional comments as deemed necessary.</td><td>SBE concurs with OLA's analysis and would like to explain why the agenda for three meetings was not posted within 48 hours of the meeting.

- March 10, 2022 Meeting: The agenda was posted on SBE's website on March 9, 2022 at 11:11 am (26 hours before the meeting). This meeting was a combined February and March 2022 meeting - the agenda was robust and there were many documents to compile and distribute. This meeting was held during a busy time, when SBE was in the midst of litigation challenging the 2022 redistricting plans and revising election calendars to reflect court-ordered changes to key election deadlines.
- June 2, 2022 Meeting: The agenda was posted on SBE's website on May 31, 2022 (45.83 hours before the meeting). This meeting was held the week of Memorial Day, and May 31 was the first business day of the week. This meeting was also held during a busy time with two court cases heard the prior week and the webmaster was converting the certified ballots into other ballot formats (e.g., formats for web delivery ballots, sample ballots for the local boards).
- August 15, 2022 Meeting: Although this meeting was the monthly meeting, the primary purpose of this meeting was for the State Board of Elections to certify the results of the 2022 Primary Election. This date was dependent on the local boards of canvassers certifying the local results, including the re-scanning of ballots in Frederick County, and the meeting was held in the midst of receiving ballot questions, LBE requests for emergency polling place changes, and internal discussions about a lawsuit to allow for pre-election day counting of mail-in ballots. The failure to post the agenda for this meeting was purely an</td></tr>
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	oversight. The Chairman approved the agenda on August 5, 2022, meeting materials were distributed to the members on August 8, 2022, and speakers were added to the virtual meeting invite on August 12, 2022. The agenda and materials were distributed in a timely manner, but the posting of the same was not done.		
Recommendation	Agree	**Estimated Completion Date:**	monthly
Please provide details of corrective action or explain disagreement.	SBE agrees with the recommendation.		