



January 11, 2010

The Honorable Martin J. O'Malley  
Governor  
State of Maryland  
State House  
100 State Circle  
Annapolis, MD 21401

The Honorable Peter R. Franchot  
Comptroller  
State of Maryland  
80 Calvert Street  
POB 466  
Annapolis, MD 21401

The Honorable Nancy K. Kopp  
Treasurer  
State of Maryland  
80 Calvert Street  
Annapolis, MD 21401

Dear Governor O'Malley, Comptroller Franchot, and Treasurer Kopp:

The Maryland Association of Counties (MACo) writes to raise concerns with the contract for voting machines pending before the Board of Public Works at an upcoming meeting. While the policy debate leading to the potential purchase of these machines has stretched on for some time, this contract approval represents a timely opportunity for the Board to assess both the propriety and effectiveness of this substantial expenditure of State and county funds. MACo believes that the contract for these voting systems should be rejected, on grounds of affordability, effectiveness, and administrative implementation.

County governments themselves do not have a primary role in administering elections – those functions are handled through the independent Boards of Elections, and overseen by the State Board of Elections. However, county governments are required to pay for half the costs of the statewide voting system, and related expenses – a cost that has resulted in massive cost increases to counties since the 2001 decision (through State legislation) to centralize the selection of voting machines and systems. For this reason, counties are concerned that this contract represents a very substantial investment in these new systems, coming at a time when both the State and county governments are facing unprecedented fiscal stress.

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With payments still due toward the direct recording electronic touchscreen voting machines currently in use, it seems unreasonable to add yet another layer of purchase and service costs to prematurely retire those systems and replace them with new ones. MACo does not believe that during a time of widespread service cutbacks, layoffs, and furloughs at both levels of government, it makes sense to make a large financial commitment to a new project to replace a system that by all accounts has served Marylanders very admirably.

The General Assembly has itself recognized the confluence of policy and cost concerns with this major purchase in the legislation that started Maryland toward a more paper-based voting system as is proposed in these contracts. Chapter 547 of The Acts of the 2007 Session, SB 392, included uncodified language to exactly this practical effect:

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on the appropriation of sufficient general, special, or federal funds in the State budget no later than fiscal year 2009 for the State Board of Elections to perform the functions set forth in Section 1 of this Act, and if sufficient funds are not appropriated in the State budget to the State Board of Elections by fiscal year 2009 to perform the functions set forth in Section 1 of this Act, this Act shall be null and void without the necessity of further action by the General Assembly. Within 10 days after the fiscal year 2009 budget has been enacted by the General Assembly, the Department of Budget and Management shall determine and notify the Department of Legislative Services whether sufficient general, special, or federal funds have been appropriated in the fiscal year 2009 budget for the State Board of Elections to perform the functions set forth in Section 1 of this Act.

Clearly, the General Assembly has recognized that the affordability of this major investment is a substantial policy decision, and MACo believes that the current economic climate renders this connection even more essential than during these initial considerations. This alone is a strong reason to defer the purchase of these new systems, but there are also policy reasons to do so.

The more recent legislation seeking to enable a vendor selection (Chapter 428 of 2009) evolved toward a compromise, where a "hybrid" use of two systems will be implemented for Maryland. This simultaneous use of two systems adds to the immediate costs of running elections, and almost certainly will not resolve the essential demands for accountability and transparency from the advocates of these goals. Allowing voters to choose the "on screen" voting machines, in many cases due to accessibility deficiencies raised by the proposed new machines, will retain every practical concern raised by the advocates for paper ballot systems. The investment of tens of millions of public dollars toward this system will not end the clamor for change, and may only guide Maryland toward another regrettable decision to prematurely obsolete an unwise investment. As financial stakeholders in these purchases, counties worry that this may become yet another poorly placed investment of public funds.

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In addition to the cost and policy issues we raise in this letter, other stakeholders such as the State Board of Elections and the Maryland Association of Election Officials have offered their own guidance on the wisdom and propriety of completing these purchases. Further complicating the matter is an investigation by the Justice Department and 14 states into whether a recent merger violates antitrust statutes because it gives the selected vendor 70 percent share of the voting machine market. MACo urges the Board to weigh these administrative and legal matters seriously, as they further weaken the case for the immediate commitment of Maryland taxpayer dollars.

At a time when governments are facing the hardest fiscal challenges in memory, committing such massive funds to replace fully functional and effective voting systems cannot be the State's top priority. Furthermore, the proposed purchase of materials for a "hybrid" system does not even accomplish the stated goals of the many who have advocated for a paper ballot system. Combine these aspects with the uncertainty about administration, legality, and looming federal action – the contract pending the Board's approval should be rejected.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Michael Sanderson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Sanderson  
Executive Director

cc: Howard S. Freedlander  
Thomas Hickey  
Jerome W. Klasmeier