

April 7, 2006

The Honorable Michael E. Busch
Speaker of the House
State House
Annapolis, MD 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed House Bill 1368 – *Election Law – Voter Bill of Rights*.

House Bill 1368 was passed as an emergency measure by the General Assembly to further expand the powers of the State Administrator of Elections and mandate certain election procedures for the 2006 elections. Last year, over my objections, the General Assembly enacted significant modifications to our State's election procedures in an attempt to promote greater voter access without taking into account safeguards that ensure integrity in our elections system. These modifications were inspired by partisan politics instead of instilling public confidence of our voting system. Now presented again are a litany of election law proposals that create an imbalance in election administration and mandate new procedures without the full consent of our local elections officials.

One of the pillars of democracy in America is our electoral process. In Maryland, we have strived to create a system that instills public confidence in our ability to conduct fair, accurate and secure elections. It has been the goal of this Administration to ensure that we are protecting voters' rights while recognizing our obligation to also protect against voter fraud. To accomplish this goal, our elections system requires a delicate balance between access to the ballot and integrity in the process.

House Bill 1368 imprudently broadens the powers of the State Administrator of Elections while limiting the power of State and local election board members and election administrators. Under current law, the State Board only requires a simple majority vote of its bipartisan Board members to approve or deny proposed election procedures and regulations. House Bill 1368 changes that by requiring a supermajority vote of the Board members. The supermajority requirement puts unreasonable restrictions on the State Board's decision making process and will result in a hamstrung or deadlocked Board on major policy issues. No other State board or commission requires a supermajority vote to conduct ordinary business and operations. Furthermore, no justification has been provided stating why requiring a supermajority vote will improve our State's elections system. As I have stated before, the current statute governing the State Board and the State Administrator has adequate safeguards to protect

The Honorable Michael E. Busch

April 7, 2006

Page 2

the rights of the minority party and to insulate the election process from undue political influences.

Increasing the State Administrator's control and authority over the administration of elections greatly limits our local board's ability to effectively conduct elections. Specifically, the bill alters current law by: (1) requiring the State Administrator to be the only person to determine if an early voting site has adequate infrastructure to accommodate computer devices; (2) requiring the State Administrator to be the sole person that can change early voting locations if determined unfeasible; (3) authorizing the State Administrator to initiate legal action to enjoin actions of a local board or its elections director; (4) authorizing the State Administrator to file suit to enjoin a local board or its elections director for violating any provision in statute, regulation, guidance, or procedures; (5) authorizing the State Administrator to step in the shoes of a registered voter and file suit on their behalf; (6) granting the State Administrator the power to suspend and replace certain individuals for violation of campaign activities; and (7) requiring the State Administrator to approve any alterations of precinct boundaries and polling places.

The primary role of the State Administrator is as a professional manager who serves as the executive director of the State's election machinery and reports to the bi-partisan State Board. The General Assembly has carefully crafted Maryland's election statute over the last forty years. As a result of this deliberate legislative process, there has been an emphasis on local control over the day-to-day management of elections with only limited State oversight. This bill egregiously changes the careful balance and makes the State Administrator the micro-manager of decisions that rightfully belong with local jurisdictions.

One of the core concepts in the current law is that the bipartisan State Board makes major policy decisions. Another fundamental underpinning of current law is that those closest to the decision making process, i.e. the county boards, are best suited to make local policy decisions. This bill catastrophically disrupts this careful balance of policy development and shifts the power to, in effect, a dictator of one -- the State Administrator. Sound policy concerning disciplinary actions, polling locations and precinct boundaries are best crafted by a nonpartisan Board, not by a single person.

As a result of the early voting veto override this past January, Maryland must implement early voting for the 2006 election cycle. Initially under the law, local election boards were directed to choose the most geographically and central locations. Instead, under this bill, the General Assembly unilaterally selected the early voting polling locations. During the Senate floor debate, it was revealed that certain local election administrators and advocacy groups had never been consulted on the placement of these early voting locations. Local election board members and administrators are the most knowledgeable about these decisions and I am dismayed that they were not able to voice

The Honorable Michael E. Busch

April 7, 2006

Page 3

their opinions and be engaged in the selection process for early voting locations in their respective jurisdictions.

I am especially disturbed that the Conference Committee appointed by the presiding officers did not include any members from the Republican Caucus. Excluding the minority party from participating in decisions concerning the placement of early voting polling places highlights the highly partisan approach of the General Assembly's election law manipulations this session. As a result, these locations were placed in areas heavily populated by Democrats rather than in ones more convenient or centrally located to all residents.

Next, this bill mandates new restrictions for purging names from the voter registration rolls. The 2005 report of the Commission on Federal Election Reform, chaired by U.S. President James Carter and former U.S. Secretary of State James A. Baker, recommends that states focus efforts on improving voter registration database management, including the requirement that states take proactive roles to register voters and cleanse voter rolls. Our election administrators need authority and flexibility to cleanse the voter registration lists and ensure that our Statewide voter registration database is in full operation in time for the upcoming elections. This bill creates artificial restrictions on this process and greatly hinders efforts by our local election administrators to have a clean and accurate voter registration list. If it is determined a registered voter has relocated, is deceased or created a fraudulent registration, that name should be removed from the voter registration database immediately. So long as local election administrators can verify ineligibility before removing a voter's name, there should not be a time-prescribed legal impediment to do so; otherwise we risk increasing the potential for voter fraud. In contrast to the restrictions created by this bill, the Carter-Baker report suggested that it is more efficient to resolve voter registration issues prior to the election instead of being caught in post election court challenges over voter eligibility that delay election results and allow judges to be the final arbitrator of who won.

I believe that the Maryland General Assembly misplaced its priorities on election issues during the 2006 session and should have focused efforts on voting system security instead of this bill. In December 2005, the California Secretary of State revealed that the memory card source code contained in our Diebold AccuVote-TS machines has never been tested. This Administration and the General Assembly had been assured previously by the State Administrator that these voting machines and its source code had been fully tested. In fact, the risk assessment study conducted by Science Applications International Corporation (SAIC) upon which we relied to assure the public that we have a reliable system was premised upon the false assumption that federal testing had certified this source code. The recent California studies emphasize that the only way to detect security breaches of a touch screen device is through a voter verified paper audit trail. Throughout the past year, the General Assembly and this Administration were under the assumption that Maryland could acquire voter verified paper audit trail equipment in time for the 2006 primary election. It was not until the first week of February, that we learned

The Honorable Michael E. Busch

April 7, 2006

Page 4

from the State Administrator that our equipment could not be retrofitted in time for the 2006 elections.

At that time, the General Assembly should have focused its full efforts on ensuring that Marylanders had a secure voting system. I supported the House of Delegates plan (House Bill 244) to implement an optical scan system with a paper ballot for the 2006 elections. In fact, I also fully funded that proposal in my Supplemental Budgets. At the least, the General Assembly should have required additional testing of the Diebold AccuVote-TS voting system to evaluate the new risk vulnerabilities caused by early voting and to address the serious security concerns raised by the California Secretary of State. Regrettably, the Senate has failed to recognize the critical status of these issues and rejected the appropriate legislation needed to secure Maryland's voting system this fall.

The entire state has been watching the General Assembly as it has altered the traditional election process in Maryland. Dramatic changes to control the election administration processes have raised suspicions and concerns from every corner of the state. Just this week, a Washington Post editorial described the actions of the General Assembly by stating "Over the past two years they have sought to leverage their statewide numerical advantage by enacting a set of relatively permissive elections laws under the aegis of what the party has called a 'voters' bill of rights.' . . . With such arrogance and abuse, the Democrats will only erode their majority in Maryland." This view is shared by many including the Executive Director of the nonpartisan group devoted to integrity in elections, Linda Schade of True Vote Maryland, who was quoted in yesterday's Washington Times: "I have to say, the Democrats are just engaged in an abuse of power that is going to contribute to a sense of mayhem in the fall elections."

For the above stated reasons, I have vetoed House Bill 1368.

Very truly yours,

Robert L. Ehrlich, Jr.
Governor