

Attendees: Robert L. Walker, Chairman
Bobbie S. Mack, Vice Chairman
David McManus, Member
Charles E. Thomann, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Sandy Brantley, Assistant Attorney General
Donna Duncan, Election Management Director
Jared DeMarinis, Candidacy and Campaign Finance Director
Michael Kortum, Chief Information Officer
Nikki Trella, Election Reform Director
Mary Wagner, Voter Registration Director
Rick Urps, Election Reform Division
John Clark, MDVOTERS Project Manager
Roger Stitt, Voter Registration Division
Janet Smith, Voter Registration Division

Also Present: Larry Carson, Baltimore Sun
Paula Troxell, Carroll County Board of Elections
Gail Carter, Carroll County Board of Elections
Gina Ellrich, Howard County
Jerrold Garson, Montgomery County Board Member
Devin Tucker, Anne Arundel
Rena Wagoner, Baltimore County Board of Elections
Katie Brown, Baltimore County Board of Elections
Betty Nordaas, Howard County Board of Elections
Angela Beltram, Howard County
Marc Norman, Howard County
Guy Mickley, Maryland Association of Election Officials (MAEO)
Holly Joseph, Save Our Votes
Stan Boyd, Save Our Votes
Michael A. Tyler, Rock Creek Academy
Keesha Blythe, OSSE
Tymil Thompson, Prince George's County

DECLARATION OF QUORUM PRESENT

Chairman Robert Walker called the meeting to order at 9:02 a.m.

APPROVAL OF THE OCTOBER 23 BOARD MEETING MINUTES

The minutes of the December 4, 2008, board meeting were presented for approval. Mr. Thomann made a motion to approve the minutes, and Mr. McManus seconded the motion. The minutes were approved unanimously.

ADDITIONS TO THE AGENDA

Chairman Walker stated that there were no additions to the agenda.

ADMINISTRATOR'S REPORT

Ms. Lamone provided the Administrator's Report.

1. Announcements

Ms. Lamone reported that Katryn Wenner, who was hired to serve as SBE's Budget Officer, resigned after three days. Ms. Wenner felt that the position was not what she expected and did not feel that she would be able to make an immediate impact. The search for a budget officer continues.

2. Meetings and Important Dates

Ms. Lamone reported that she, in her capacity as a member of the U.S. Election Assistance Commission's Advisory Board, and Nikki Trella, a member of the Standards Board, attended the EAC's Standards Board meeting in Orlando,

Florida on February 26th – 27th. Harford County Election Director Jim Massey was also in attendance as Maryland's other representative on the Standards Board. The agenda included discussions of the Voluntary Voting System Guidelines, the EAC's 2008 Election Day Data Survey, a presentation by the Nevada Gaming Commission on the standards and testing of gaming devices, and other administrative topics. A summary of the meeting will be provided in the meeting folder.

Ms. Lamone reported that Ross Goldstein attended a continuing legal education class conducted by the Election Center during the National Association of State Election Directors' conference. The class focused on the issue of voter registration and database list maintenance issues. The speakers noted legal challenges to state voter registration procedures and the fact that compliance with the National Voter Registration Act could be a major focus of the Department of Justice. Staff is looking into this issue.

Ms. Lamone reported that an election directors' conference call was held on Tuesday, March 17th. Teleconferences, instead of in person meetings, are continuing to be used to save the local boards unnecessary travel expenses. During the meeting, staff briefed the election directors on the status of several election bills. The voter registration staff provided an updated schedule for JAD sessions and software releases. In response to a question, staff clarified that, pursuant to the passage of the early voting question, no excuse absentee voting is in effect and no legislative changes are necessary. Finally, staff responded to a request for an update on the status of the voting system RFP. While not a lot of information can be shared, the election directors were informed that proposals were received.

Ms. Lamone reported that Mr. Goldstein also attended an audit workshop hosted by the Pew Charitable Trusts and the University of Utah on February 23rd and 24th in Salt Lake City, Utah. The meeting was attended by election officials, academics, and advocates. Each participant summarized his or her research in the area and there were opportunities for discussion and consideration about what issues need future attention. Mr. Walker inquired whether Maryland's project was completed. Mr. Goldstein responded that it had been submitted to Pew. To date, no response has been received from Pew. Mr. Goldstein stated that he expected some additional work on the project, including suggested edits from Pew and an analysis of audits conducted by staff.

3. Election Management and Reform

Ms. Lamone noted that the 2008 Voter Registration and Election Day Survey was submitted to the EAC's contractor in mid-February. This survey requested data on active and inactive voters, new registrants and registrants who have been removed, statistics regarding polling place, absentee and provisional turnout, pollworkers, and voting system information. The data is currently being reviewed by the contractor and will be returned to the states for verification. Once this verification occurs, the spreadsheet will be provided and posted on the website.

Ms. Lamone reported that statistics from the 2008 General Election have been finalized. General turnout information as well as provisional and absentee voting statistics were provided in the meeting folder. Ms. Trella stated that summaries of the data were posted on the website. Mr. Thoman stated that there was an amazing amount of detail in the statistics.

Ms. Lamone reported that Ms. Trella and Janet Smith have conducted trainings for the local boards on the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and how registration and absentee forms from military and overseas voters should be processed in MDVOTERS. They have conducted trainings for Anne Arundel, Baltimore City, Baltimore County, Carroll, Howard and Prince George's and are trying to schedule an Eastern Shore training this month.

Ms. Lamone reported that, in an effort to comply with one of the agency's Managing for Results' objectives, a survey of voters with disabilities was conducted to evaluate their satisfaction with the State's voting system. Last month, Rick Urps mailed 426 surveys to voters who voted used the audio ballot in the 2008 General Election. (The electronic pollbooks capture the names of voters for whom an election judge encodes a voter access card for an audio ballot.) To date, he has received about a 30% response rate and the majority of respondents had a positive response to the State's voting system and the assistance provided by election judges. Specifically, they appreciate the opportunity to vote independently and raised concerns about the change in the voting system.

Ms. Lamone also noted that Mr. Urps is in the process of establishing committee to review and update the election judges' manual and other training materials for the 2010 election. This committee will likely include 6 representatives of the local boards and have its first meeting next month.

4. Voter Registration

Ms. Lamone reported that on February 16, 2009, a new MDVOTERS software version went into production. This release included enhancements in areas of reporting, absentee voter management, and election workers.

Ms. Lamone also reported that on February 17 – 20, 2009 members of MDVOTERS met with EDS' project manager and functional analyst to discuss the next software release. Components of the next release were identified prior to the 2008 Presidential General Election (but were put off until after the election). Areas of development identified included:

- Known application errors;

- Changes to reports;
- Additional system configuration ability;
- Additional screen prompting; and
- Additional printed output functionality.

The next release and the next JAD session are scheduled for early June.

Ms. Lamone reported that staff has been working closely with EDS to capture features of an effective module to assist in processing the data we receive from MVA. EDS will be submitting a cost and time proposal for development of the module. This module will better enable SBE and the local boards to track and contact individuals who believe they are either actively registered or their address has been updated in the statewide voter registration database.

Ms. Lamone reported that the Voter Registration Division completed a work plan for 2009. The work plan identifies all tasks that need to be accomplished during the year. Some of the tasks identified are as follows:

- Schedule of upcoming software releases;
- Development of consolidated voter registration business process manual;
- Complete absentee processing manual;
- Long term business process for Ad Hoc reporting; and
- Incorporate early voting development within MDVOTERS.

5. Candidacy and Campaign Finance

Ms. Lamone reported that on March 24, 2009, the Montgomery Pre-Primary 1 Campaign Finance Report was due for participating political committees. The transaction period cover from January 15 to March 17, 2009.

Ms. Lamone also reported that on February 20, 2009, SBE referred the following to the Office of State Prosecutor for further investigation:

- Sarah Matthews - Personal Treasurer- failure to report a transfer;
- Three Bears Slate - failure to provide accurate entry in a Campaign Finance Report; and
- Lauren Parker of 8410 Ft. Smallwood Road, Pasadena, Maryland for failure to conduct campaign finance activity through a registered campaign finance entity, failure to establish a political committee in accordance with Election Law 13-207 and failure to remit anonymous contributions to the State Treasurer.

6. Voting Systems

Ms. Lamone reported that the procurement for a new voting system is progressing. Proposals were received and distributed to the evaluation committee on Monday, March 16th. The evaluation committee will meet in mid-April for vendor presentations.

Ms. Lamone also noted that the Voting System Division has continued in the development of project plans and other documentation for the new voting system. This is an ongoing process and will continue until the new system is in place. Ms. Lamone stated that meeting the January 1, 2010, deadline will be difficult.

Ms. Lamone reported that maintenance of the voting system has been continuing. This maintenance has included not only voting units but also the pollbooks and their printers. A large number voting units are undergoing the maintenance process, so that there are enough available to hold a special election, should it be required.

Ms. Lamone reported that electronic pollbooks performed flawlessly in the Salisbury Primary Election on March 3rd and the Hagerstown Primary Election March 10th. Turnout was light: 11.1% and 11.2% respectively. Database preparations are underway for 3 municipal elections plus the Montgomery Council District 4 Special Election to be held in April. SBE will also provide pollbook data services for the Montgomery County Student School Board Member Election on April 29th.

Ms. Lamone reported that SBE has begun preliminary testing on Premier's ExpressPoll software version that allows the electronic pollbooks to connect to the EPIC database server for the purpose of posting and monitoring early voting activity. Additional testing will be conducted over the next several months to verify that the existing system architecture can handle the anticipated volume of early voting transactions, and to make sure that all functional requirements are met.

Ms. Lamone reported that SBE is investigating the feasibility of using COTS (commercial off the shelf) mapping software (specifically Arc GIS) for publishing election-night turnout and results to our website. GIS is used by many Maryland localities and a growing number of State agencies, including DNR's "Greenprint" program. SBE will be meeting with the vendor the week of March 23rd to get a better sense of the hardware, software, and level of programming effort that would be required to implement a results reporting solution.

7. Information Technology

Ms. Lamone reported that the IT Division has been busy providing service to the local boards and performing the following activities.

- Ongoing Testing of the online campaign finance affidavit filing application;
- Completed the application of Linux firmware upgrades on MDVOTERS Linux servers;
- Tested and applied recent Microsoft Critical patches on servers and client workstations;
- Upgraded the Electrack software application from Version 9.0.12 to 9.0.13;
- Provided assistance with data tables for the University of Maryland website; and
- Designed and specked out backup web server to reside at the MD State Archives;

8. Legislation

Ms. Lamone reported that there has been a lot of legislation on election related issues. An updated tracking chart was distributed and members were reminded that testimony on bills had been sent in advance of the meeting. Ms. Lamone pointed out information on the following bills:

- a. Early Voting (SB 557 and HB 1179) – Amendments to the Senate Bill provide for early voting to occur starting on the second Friday before election day through the Thursday before election day. It would also require early voting during the hours of 10 a.m. through 8 p.m. Finally, the bill specifies the number of early voting centers (based on the number of registered voters), but leaves it up to SBE, in consultation with the LBEs to determine the locations. Ms. Mack asked who is responsible for choosing the specific locations. Ms. Lamone stated that the Board is responsible, with input from the LBEs.
- b. Public Campaign Financing Act for Candidates for the General Assembly (SB 663 and HB 1353) – This bill would establish a public funding system for candidates for the General Assembly. Candidates would have to meet certain qualification requirements to receive the money. Once qualified, they would receive a statutory prescribed amount of money depending on the race and the amount of competition faced. The bill as amended will also raise the campaign finance contribution limits. Ms. Lamone noted that the bill does not appear likely to pass.
- c. Access to Voting Room by Minors (HB 3) – This bill changes, from 12 to 17, the age requirement for a minor to be allowed access to the voting room and voting booth with his or her parents. Ms. Lamone noted that this bill is likely to pass.
- d. Change of Party Affiliation Deadline (HB 589) – This bill makes the deadline to change party affiliation before a primary election the same as the deadline to register to vote. Ms. Lamone that this bill is also likely to pass.
- e. Campaign Finance Entities – Use of Debit Cards (HB 805) – This bill allows campaign finance entities to use debit cards instead of only relying a checks drawn from the campaign bank account. Ms. Lamone that this bill is also likely to pass.
- f. Regarding voting system legislation, Ms. Lamone noted that money was in SBE's budget for the voting system. There are bills in both chambers to delay the implementation of a new voting system and bills to create a hybrid system where the current touchscreen units would continue to be utilized for voters with disabilities.
- g. Ms. Lamone also stated that there was legislation being considered that would move the date of the Gubernatorial Primary Election earlier in the year to create more time between the primary and the general election. With early voting, there is a real concern that there is not enough time between the elections to print ballots and conduct other necessary administrative tasks – especially if there is a judicial challenge.

Finally, Ms. Lamone reported on the departmental legislation.

- HB 1391 – The bill provides that a registered voter may initiate a challenge based on whether the candidate meets the required qualifications for the office sought. The bill provides a deadline for bringing the challenges and requires the court to issue an expedited ruling.
- HB 1392 – This legislation offers numerous technical and clarifying corrections to the Election Law Article.
- HB 1394 – The legislation generally relates to the hiring, assignment, and compensation of election judges.
- HB 1395 – This bill would increase the late fees from \$250 to \$500 per campaign finance report and allow for the filing of Affidavit of Limited Contributions and Expenditures past the report due date. Furthermore, this bill would impose a separate late fee penalty for failure to timely file required amendments to campaign finance reports.
- HB 1398 – This bill establish several revises Title 13 to remove certain provisions that are no longer necessary due to law changes or court decisions and codify current policies and opinions of the Attorney General.

Mr. Walker thanked Ms. Lamone for the report and asked the members whether they had any questions. Mr. McManus asked whether it would be possible to provide the Board with the written testimony prior to or at the same time as the hearing. Both he and Mr. Thomann are interested in receiving this information so that they can respond to questions and inquiries. Ms. Lamone stated that this request will be accommodated.

ASSISTANT ATTORNEY GENERAL'S REPORT

Ms. Brantley reported that SBE was named as a defendant in a lawsuit filed in Howard County Circuit Court, and served on February 4, 2009. The suit challenges the validity of a petition for referendum that seeks to bring a locally enacted law to a vote in Howard County. Plaintiffs claimed that petition circulators failed to comply with State and county laws governing the petition process, and additionally challenged the sufficiency determinations of the local board regarding the petition. SBE has filed a motion to dismiss the case against it on the ground that SBE is not a proper defendant in the case because the allegations solely involve the actions of Defendants Howard County Board of Elections and the petition sponsors. Since that filing, the local board has determined that the petition was insufficient, and thus, has moved to dismiss the case altogether. The case is set for a preliminary hearing on April 21st. The case is *Greenberg Gibbons Commercial Corp. v. Howard Co. Board of Elections, et al.*

Ms. Brantley reported that on March 18th, at the request of the Howard County Delegation, she and Donna Duncan appeared before the delegation to discuss recent events in Howard County concerning the petition for referendum at issue in the Greenberg case, which was recently found to be insufficient by the local board. There was a discussion about the *Doe v. Montgomery Co. Board of Elections* case, in which the Court of Appeals rejected that election officials had the authority to validate petition signatures on the basis that they could determine with "reasonable certainty" that the person signing was a registered voter. The Court stated that: "The plain meaning of the words 'shall' and 'requirements' in Section 6-203 reflect that the statutory provisions require that the voter must sign his or her name 'as it appears on the statewide voter registration lists or the individual's surname of registration and at least one full given name and the initials of any other names'; the provisions are mandatory, not suggestive." *Doe v. Mont. Co. Bd. of Elections*, 406 Md. 697, 728 (2008). Moreover, the Court reaffirmed its holding in *Barnes v. State*, 236 Md. 564 (1964), that the legislative provisions regarding additional information required to accompany a petition are mandatory. 406 Md. at 729-731. Senator Kasemeyer introduced emergency legislation, SB 1067, to allow election officials to return to the "reason certainty" standard.

Ms. Brantley reported that on March 2, 2009, she advised Ms. Lamone about proposed legislation, SB 499 and HB 1286, that would take out a requirement in the State's election law in EL § 3-503 that election officials remove a voter's name from the voter registry if the voter both (1) fails to respond to a confirmation notice and (2) subsequently fails "to vote in an election in the period ending with the second general election ..." The letter of advice concluded that there is a strong risk that a court would declare that the legislation would violate the federal National Voter Registration Act (NVRA), as well as the Help America Vote Act (HAVA).

Finally, Ms. Brantley reported that on March 16, 2009, she issued advice to Delegate Jon Cardin concerning HB 738, which would allow SBE to certify and use a voting system that does not have a voter-verifiable paper record. The change will allow voters with disabilities to continue using the State's current DRE touchscreen voting machines. Delegate Cardin asked whether there is "an equal opportunity issue with the referenced bill if the DREs are accessible and available to anyone who chooses to use it." The letter concluded that such a plan would not violate the Americans with Disabilities Act (ADA), the Help America Vote Act (HAVA), the Equal Protection Clause of the United States Constitution, or Article 14 of the Maryland Constitution.

PUBLIC TESTIMONY

Mr. Walker introduced Mark Norman, who had asked to address the Board regarding a petition issue in Howard County. Mr. Norman stated that he was leading a petition effort in Howard County to bring to referendum a zoning bill regarding a Turf Valley development project. According to Mr. Norman, his group initially submitted 3,300 signatures, of which 2,600 were certified by the Howard County Board of Elections. Based on this number, his group would then need an additional 5,000 signatures. To meet that requirement, they collected 9,380 signatures (assuming that the 22% rejection rate would continue). On February 12th, Mr. Norman was informed that Howard County had stopped counting signatures. The Board had reviewed and changed the procedures for verifying petitions based on the Court of Appeal's decision in the *Doe* case. That decision indicated that, instead of simply verifying that a petition signature was of a registered voter, the Board must verify that the signature matches the registration record (for example, if the voter is registered as Robert Jones, the petition signature would have to be "Robert Jones" and not "Bob Jones"). Using this verification method, the rejection rate went from 22 to 85 percent. Based on that rejection rate, the Board concluded that there was no way the petition submitted by Mr. Norman would be sufficient.

Mr. Norman stated his opinion that this policy change was unfair to his group and erodes a fundamental right to petition local government. He further noted that they had met with the county and were conscientiously following all of the instructions (including those posted on SBE's website). Mr. Norman noted that he is not blaming either the State Board or the Howard County Board, whose staff was very helpful, but he felt that changing the rules midway through the process was wrong and that the State Board act to restore the petitioners' fundamental rights.

Mr. Walker responded that, while he appreciates the position of the petitioners, the State Board is bound to comply with the Court of Appeals decision as instructed by the Attorney General. Mr. Walker stated that the State Board does not have the authority to do otherwise.

APPROVAL OF PETITION INSTRUCTIONS

Ms. Duncan presented the proposed petition instructions and forms, which were revised to reflect the Court of Appeals' decision in the *Doe* case. Ms. Duncan noted that the instructions and form presented only apply to one type of petition, but upon the Board's approval, the same changes will be made to all petition instructions and forms. Mr. Walker asked whether there were any other changes besides those being made to comply with the *Doe* case. Ms. Duncan responded that there were no other changes. Mr. McManus asked whether the instructions will help petitioners avoid an 85% rejection rate. Ms. Brantley responded that it is unknown whether the rejection rate will improve, but the instructions will certainly clarify how to be in compliance with petition requirements. Ms. Mack made a motion to approve the petition instructions and forms. Mr. McManus seconded the motion. The amended instructions and forms were approved unanimously.

PRECINCT AND POLLING PLACE CHANGES

Ms. Duncan informed the Board that, in preparation for the 2010 U.S. Census, the Department of State Planning has been working with the local boards of elections to review the precinct boundaries. Partly in response to this review and in order to make timely adjustments, the following changes have been requested:

1. Baltimore County requested approval to create four new precincts. Three are being split from existing precincts that currently have over 4,000 voters assigned to them. The fourth precinct is being created for Towson University students.
2. Carroll County requested approval to combine precincts that are currently located in the same facility.
3. Charles County requested approval to split seven precincts, all of which have over 3,000 voters assigned to them.
4. Harford County requested approval to move six polling places in order to provide improved facilities (including ADA compliance).
5. Howard County requested approval to change the rooms within the current location of two polling places.

Mr. Thomann made a motion to approve the changes which was seconded by Ms. Mack. The motion to approve the precinct and polling place changes was unanimously approved.

WAIVER OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented to the Board the following committees for waiver of late fees:

1. Rob Cheek For Delegate A5066
2. Norman E. Bowie For School Board District 2 A6747
3. Friend Of James Butler A4026
4. Friends Of Michelle Jefferson A4844
5. Friends Of David S. Jones A6825
6. The Committee to Elect Nancy Jacobs A501
7. Committee To Elect Steve Wallis A5169
8. Friends Of Johnnie DeGiorgi A6559
9. Citizens To Elect Vicky L. Orem A6311
10. Committee To Elect Scherod Barnes A6526
11. MD/DC National Association Of Industrial And Office Properties PAC A4498
12. Fifth District PAC A228
13. Carroll County FOP Lodge 20 PAC Fund A6808
14. Citizens To Elect Sherry James Strother A6760
15. Greater Baltimore Committee PAC A3838
16. Committee To Elect Danny Mayer A498
17. Maryland Motor Truck Association PAC A253
18. Friends Of Phil Foster Committee A338
19. Baltimore County Firefighters PAC A200
20. Friends Of Adam Meister A6513
21. Friends Of Tom Perez A1998
22. Talbot County Republican Central Committee A162
23. Team 13 Slate A4804
24. Friends Of Marva Jo Camp A489
25. Families For David Griffith A6658
26. Friends Of Jennifer Terrasa A4511
27. Friends Of Greg Billups A4989

28. Committee For Thomas A. Mattingly, Sr. A977
29. Committee To Elect Matthew Simpson A5123
30. Citizens For Tim Thompson A6367
31. Friends Of Sharrarne Morton A4895

Ms. Mack made a motion to accept the recommendations granting a waiver of late fee, seconded by Mr. Thomann. The motion passed unanimously.

OLD BUSINESS

Mr. Walker stated that the Board's bylaws still need to be enacted. He requested that staff include approval of the bylaws as an item on the next agenda.

NEW BUSINESS

There was no new business to discuss.

SCHEDULE FOR THE NEXT MEETING

Mr. Walker announced that the next meeting will be held on April 23rd at 2:30 P.M.

CLOSED SESSION

Mr. Walker asked for a motion to end the open meeting and go into a closed session for the purpose of discussing a matter relating to an investigative proceeding on actual or possible criminal conduct. Ms. Mack made the motion which was seconded by Mr. McManus and unanimously approved by the Board.

ADJOURNMENT

Ms. Walker adjourned the meeting at 10:15 A.M.