



State of Maryland
State Board of Elections Meeting – February 25, 2010

Attendees: Robert L. Walker, Chairman
Bobbie Mack, Vice Chairman
David McManus, Member
Charles Thomann, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeff Darsie, Assistant Attorney General
Mary Wagner, Voter Registration Director
Nikki Trella, Election Reform Director
Jared DeMarinis, Candidacy and Campaign Finance Director
Matt Libber, Project Management Office
Rick Urps, Election Reform Deputy Director

Also Present: Michael Dawson, Constitution Party of Maryland
Stan Boyd, Save Our Votes
Shelly Fudge, Save Our Votes
Jerrold Garson, Montgomery County Board of Elections
Lynn Garland

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 4:04 p.m. and declared that a quorum was present.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the January 28, 2010, board meeting were presented for approval. Mr. McManus made a motion to approve the minutes, and Ms. Mack seconded the motion. The motion was approved unanimously.

ADMINISTRATOR'S REPORT

1. **Announcements**

New Employee

Ms. Lamone introduced Dan O'Connell who recently joined the SBE family. Dan came from DNR, Tidewater Ecosystem Assessment as a Programmer/Analyst (9yrs). While there, he developed the original Continuous Monitoring. The site posts water quality data from submerged sensors. Dan also wrote programs that gathered data in near real time and posted the data to the web site in graphic and tabular form. Dan is a member of the Project Management Institute and has an Associate's Degree in Information Services and Computer programming and a Bachelor of Science Degree in Business Administration, Information Technology.

2. **Meetings and Important Dates**

National Association of State Election Directors' (NASED) Winter Meeting

Ms. Lamone reported that she attended NASED's winter meeting held on January 28th – 30th in Washington, D.C. The meeting was very informative and included briefings from representatives of the U.S. Election Assistance Commission (EAC) and the Census Bureau, updates from Congressional staff members, and a presentation by Tom Perez, head of the U.S. Department of Justice's Civil Rights Division and former Secretary of Maryland's Department of Labor, Licensing and Regulation. A summary of the conference was provided in the meeting folder.

Election Directors' Meeting

Ms. Lamone reported that a conference call with the election directors was held on February 16th. During this meeting, the following topics were discussed: the contract and funding status of the voting system and the election-related support services contracts, the tasks required to maintain the current voting system, and the status of the electronic pollbooks and the expected software upgrade. A copy of the meeting summary was provided in the meeting folder. The next election directors' meeting is scheduled for March 16th.

Ms. Mack stated that, in light of the fact that it appeared that the new optical scan procurement would not be going forward, she wanted recognize the staff for their efforts in nearly completing such a big procurement. Mr. Walker also stated that staff's hard work had not gone unnoticed. Ms. Lamone also noted that when the

procurement process begins again, the State would be in a much better position if there was more flexibility in what can be procured. Maryland law is currently very restrictive and currently only one solution from one vendor meets the accessibility requirements.

Informal Meeting on Voting System Procurement

Ms. Lamone reported that Mr. Goldstein and Ms. Trella, along with Charles County Election Director Tracy Dickerson, attended an informal meeting to discuss the voting system procurement and costs relating to implementing the new system. The meeting included paper trail advocates, a member of the General Assembly and staff, and the Governor's chief policy advisor. The meeting was intended to serve as an opportunity for SBE to explain the different contracts and related costs, respond to questions, and receive input from the advocates regarding their concerns and opinions for cost savings measures. Mr. Goldstein and Ms. Trella indicated that, in general, it was a good and productive meeting.

EEO Coordinators

Ms. Lamone reported that on February 17th, Mr. DeMarinis and Jackie Bryley attended an interactive training on Investigative Techniques and Discrimination Law Theory sponsored by the Office of the Statewide EEO Coordinator. The training provided them with the tools necessary to investigate complaints of unlawful employment practices. The next scheduled day for the training is March 10th.

3. Election Reform & Management

Military and Overseas Voter Empowerment Act

Ms. Lamone reported that on February 19th, the National Council of State Legislators hosted a web-based presentation on this new federal law. Although the target audience was State legislators and staff, State election officials were able to join the webcast.

It was also reported that staff continues to await information from the Department of Defense's Federal Voting Assistance Program (FVAP) on how to submit a waiver of the requirement to mail absentee ballots to military and overseas at least 45 days before an election. We have learned that the U.S. Department of Justice is working closely with the FVAP to develop regulations on the waiver process and expect additional information about the waiver process in the next couple of months. In response to a question from Ms. Mack about the date of the absentee canvass, Ms. Lamone state that generally, the absentee canvass is conducted on the first Thursday after the election and then a second canvass conducted on the second Friday.

Election Judges' Manual

Ms. Lamone reported that the election judges' manual committee, led by Mr. Urps, continues to meet weekly, and they are making significant progress on the election day manual and the early voting supplement. Ms. Lamone also noted her admiration for the yeoman's work the committee is performing. The documents are scheduled to be completed and distributed to the local boards of elections for customization in April. The representatives of the local boards of elections are pleased with the current development.

Status of Various Regulations

Ms. Lamone reported that the new early voting regulations on public notice (33.17.03), equipment and set-up (33.17.04), and election judges (33.17.05) became effective on February 22nd. The proposed changes to 33.06 (Petitions), 33.07 (Election Day) and 33.08 (Canvassing) were published in the January 29th edition of the *Maryland Register*, and the public comment period ends March 1st. These proposed regulations will be presented for final adoption at the March board meeting.

4. Voter Registration

New Voter Registration Applications (VRA)

Ms. Lamone reported that the new voter registration applications are currently being delivered to the local boards. The format of the new VRA mirrors the MDVOTERS application, which will make it easier for users to do data entry.

MDVOTERS Software

The latest software release was successfully migrated in to production on February 6th (during the blizzard). In spite of the extreme weather conditions and office closings, three release overview" sessions were conducted. 110 attendees from 22 local boards and SBE participated. This training is also located in the online library. The release primarily adds functionality for Early Voting and addresses new needs for Election Workers. Two more software releases are scheduled before MDVOTERS goes on "lock down" on June 30th. Once in "lock down" no further changes will be made to the system until after the 2010 Gubernatorial Election.

On February 22nd, Mary Jo Waite, our Field Support representative, conducted Election Worker training that incorporates the new Early Voting functionality. This training will also be located on the online library.

Petition

The Anne Arundel County Board of Elections received a local Charter petition. Janet Smith and Ms. Wagner assisted the Board with petition "refresher training" for staff prior to the verification process. Allegations of misconduct by petition gatherers have been received and referred to the State Prosecutor.

Miscellaneous

John Clark continues to work on the Request for Proposals for software maintenance and data center operations support. It is the goal to get both RFPs out by the end March.

Roger Stitt has conducted two Voter Registration – Policies and Procedures courses for the Election Preparedness and Professional Development Program. The classes have been well attended and well received.

5. Candidacy and Campaign Finance

Candidate Filings

Ms. Lamone reported that as of February 22nd, 88 candidates have officially filed for the 2010 Gubernatorial Election.

Seminars/Trainings

On February 20th, the Candidacy and Campaign Finance Division was invited by the Maryland Republican Party to conduct training on the responsibilities of chairmen and treasurers. It was attended by 25 people.

On March 9th, the Candidacy and Campaign Finance Division will conduct a seminar on campaign finance regulations, responsibilities of the chairman and treasurer, and a general overview of election law. The Candidacy and Campaign Finance Division will be conducting the seminars at least once a month during this election year.

Enforcement Actions

The Candidacy and Campaign Finance Division continues to monitor the Maryland Republican State Central Committee's progress in repayment of the outstanding debt to the Michael Steele for Maryland Committee. All parties are in compliance with the memorandum of understanding.

6. Voting Systems

Maintenance and Preparation of Voting System

Ms. Lamone reported that, as a result of a contract not being signed for the optical scan system, the voting system team has had to change tracks and is now engaged in preparation for the use of the current touchscreen system for the 2010 elections. To support this, maintenance requirements on the touchscreen units are currently being evaluated and the level of effort is being determined. Maintenance and preparation of the voting units, GEMS servers and ancillary items will be ongoing for several months.

Software Evaluation

SBE has received evaluation copies of the latest software for the touchscreen voting system from ES&S. This software suite was certified to the 2002 voting system standards by the U.S. Election Assistance Commission and provides updates to every part of the voting system – including the touchscreens, GEMS servers, optical scanners for absentee and provisional votes, key card software and the encoders. SBE is currently evaluating this suite to determine whether an upgrade is necessary. Given the cost to upgrade to a new version of software, an upgrade will only take place if it is determined that the new version is necessary.

Electronic Pollbooks

SBE has begun testing electronic pollbooks in simulated "Early Voting" configuration with pollbooks connected via a dedicated wide area network (WAN) to the SBE server. During testing the week of February 15th in Anne Arundel and Baltimore counties, more than 12,000 check-in transactions were posted to the server. The average time to transmit and process each transaction was less than 5 seconds, and there were zero dropped transactions. SBE has also conducted testing of voter status updates exported from the MDVOTERS system (such as absentee ballots issued during the early voting period) and demonstrated that the status updates are correctly displayed on all electronic pollbooks connected to the WAN.

Testing will continue with the test database expanded to include all 24 local boards, and a progressive increase in the number of connected remote locations.

7. Information Technology

Ms. Lamone reported on the following activities of the IT division.

Technical Updates and Activities

- Completed several MDVOTERS security updates to the data center
- Completed Oracle patches to all SBE applications
- Updated several SBE hardware/software licenses and support
- Completed several third party software upgrades/patches
- Provided updates to the data tables for the UofM
- Provided updates to Electrack data tables
- Rebuilt 5 desktop computers
- Completed upgrades to 2 PCs
- Completed several website enhancements
- Completed numerous updates to the on-line library
- Completed material inventory updates to two LBEs
- Completed supplemental security audits for one LBE
- Continued development of data file changes for data transfer between SBE and MVA

Training

- Natasha Walker completed CCS #522 development class

Network

- Completed troubleshooting and repair of network connections for 3 LBEs.
- Completed initial early voting VPN test with local LBE

Security

- Processed 2 employee background clearances
- Updated 67 MDVOTERS user access accounts
- Completed one firewall configuration change.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported that the proponents of slot machines at the Arundel Mills Mall location filed a complaint for declaratory ruling and injunctive relief against the local board of elections in Anne Arundel County. The complaint does not include SBE. However, it is relevant to SBE since the complaint raises numerous issues with respect to the interpretation of the Election Law Article and the role of the local boards in the petition signature verification process. The complaint challenges the interpretation of who can be a sponsor, the petition verification process, and asserts that the local boards have a duty to investigate, monitor and police the gathering of signatures, as well as a duty to reject signatures alleged to have been collected due to misrepresentation or concealment of facts by petition circulators.

FINAL APPROVAL OF EARLY VOTING CENTERS

First, Mr. Goldstein stated that following the January meeting, he polled the members to obtain their approval on the fifth early voting center in Prince George's County: the Sports and Learning Complex. Mr. Goldstein stated that approval for that location was unanimous.

Second, Mr. Goldstein presented to the Board a new early voting center for Queen Anne's County. The original center that the Board had approved is undergoing construction and will not be available. Accordingly, Queen Anne's County Board has found a new site less than a mile from the original location. The new site is the Queen Anne's County Free Library in Centerville. The new site also does not meet the population requirement but comes close by being located within 10 miles of 37% of registered voters. It was noted that the location is free, close to the Board office, accessible by public transportation, compliant with the accessibility requirements, and has sufficient parking. Ms. Mack made a motion to approve the proposed Queen Anne's early voting center, and Mr. Thomann seconded the motion. The motion passed unanimously.

Finally, Mr. Goldstein noted that the regulations for early voting center site selection are now effective. Accordingly, Mr. Goldstein requested that the Board grant final approval of the early voting centers presented over the past several months. Ms. Mack made a motion to grant final approval to all of the early voting centers, and Mr. Thomann seconded the motion. The motion passed unanimously.

APPROVAL OF FORMS

Ms. Trella presented three forms for approval by the Board: Absentee Ballot Application, Late Absentee Ballot Application, and the Designation of Agent form. Ms. Trella noted that the substance of the forms was essentially the same as the forms used for 2008 elections. One change is that there is now an option of delivery via the Internet. The late application is the same except that the designation of an agent is now a separate form. Ms. Mack asked whether voters who receive their ballots via the Internet will have to use three envelopes. Ms. Trella explained that three envelopes are no longer used. Instead, the oath is on a separate sheet that will be sent in one envelope along with the voted ballot. Voters will be instructed to write "Absentee Ballot Enclosed" on the envelope so election officials will know not to open it (procedures are in place to address the situation where an envelope is not marked and is accidentally opened). Mr. McManus asked about the security implications of delivering the ballots via the Internet. Ms. Trella responded by outlining the process for receiving a ballot via the Internet.

1. The voter will request the ballot on the absentee ballot application;
2. The voter will receive a unique ballot ID number via email from SBE;
3. The voter will then go to the SBE/UM website voter look-up;
4. The voter will need to enter his or her name, address, and date of birth; and
5. The ballot will be available to download once the voter provides the unique ballot ID number that was sent via email.

Finally, Ms. Trella noted that there will need to be one additional change on the absentee ballot application. She explained that the Board had previously adopted proposed regulations changing the deadline to submit an absentee ballot application from 4:30 pm to 8:00 pm.

Ms. Trella asked the Board to consider allowing her to change the deadline on the absentee ballot application once the relevant regulation change become effective. Mr. McManus made a motion to approve the forms and update the absentee ballot application with the new deadline once the regulations are effective, and Ms. Mack seconded the motion. The motion passed unanimously.

APPROVAL LBE BYLAWS

Mr. Goldstein stated that the Montgomery Board of Electrons had submitted their bylaws for approval by the Board. Mr. Goldstein noted that the bylaws differ from the model bylaws in several respects, but none of the differences are legally impermissible.

1. The model bylaws specify that the Vice President should be of a different party than the President. Montgomery bylaws require the Vice President to be of the same party. Instead, Montgomery bylaws require the Board Secretary to be of the opposite party of the Board President.
2. Model bylaws require a member of the minority party to be present in order to constitute a quorum. Montgomery bylaws do not include that requirement.
3. Model bylaws state that contributions are permissible provided disclosure is given. Montgomery bylaws permit contributions and do not require disclosure.

Mr. McManus asked if Montgomery County had an explanation for not following the model quorum requirements. The Montgomery Board President, Jerry Garson, stated that it simply had not been an issue in the past. Mr. McManus requested that the Montgomery County Board re-visit the issue. Mr. Garson agreed to the request and approval of the bylaws was deferred until the next meeting.

REPEAL OF PROCEDURES AND GUIDELINES

Ms. Trella requested that the Board repeal the *Guidelines for the Administration of Provisional Voting* and the *Procedures for the Administration of Absentee Voting*. The provisions in these documents have been incorporated into COMAR, and as a result, the two documents are no longer needed. State law also requires that the Provisional Guidelines be reviewed prior to each election. Ms. Trella noted that the recent involvement of the local boards of elections in the regulatory review process and codification of the Guidelines as regulations served to fulfill the requirement to review the Guidelines.

Mr. McManus made a motion to repeal the *Procedures for the Administration of Absentee Voting*, and Ms. Mack seconded the motion. The motion passed unanimously.

Ms. Mack made a motion to repeal the *Guidelines for the Administration of Provisional*, and Mr. McManus seconded the motion. The motion passed unanimously.

REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Jared DeMarinis presented the following requests for campaign finance late fee waivers:

1. Friends of Peggy McCrimmon
2. Allegany County Democratic Central Committee

3. Committee for Curt Anderson
4. Larry Stancill Election Committee
5. Peggy Magee
6. Friends of Don Praisner
7. Vic Bernson of Maryland
8. Veterinary PAC MD

Chuck Thomann made a motion to accept the Administrator's recommendation to grant the eight waiver requests, and Mr. McManus seconded the motion. The motion passed unanimously.

NEW BUSINESS

Shelly Fudge of Save Our Votes addressed the Board on her concerns that the State will not be implementing a new optical scan voting system. First, Ms. Fudge noted that she and her group have done extensive cost analyses. Ms. Fudge disagrees with SBE's assessment that funds will be saved if the new voting system is not implemented and therefore thinks the new optical scan contract should be finalized and approved by the Board of Public Works. In Ms. Fudge's opinion, it does not make sense to spend as much for an optical scan system as the touchscreen system. Having one-fifth of the voting system equipment to manage will create a significant savings. According to Ms. Fudge, different jurisdictions around the country have confirmed that optical scan voting systems are much cheaper to run than touchscreen systems. Further, Ms. Fudge noted that SBE requested supplemental funds for FY 11 because the services contract was approved without necessary funding. It is still not clear how much it will cost to run the 2010 Gubernatorial Election. She notes conflicting numbers in documents that SBE has provided to policymakers. In addition, Ms. Fudge noted that some of the items that SBE included in the cost of the new system were unnecessarily expensive. For example, SBE provided a price for new voting booths at \$360 per booth. Ms. Fudge stated that table top privacy screens could be used for a fraction of that cost. In sum, Ms. Fudge stated that staff has been underestimating the cost of running the touchscreen system and overestimating the cost of switching to optical scan.

Chairman Walker stated that the Board will continue to work with staff on understanding the costs of both systems. Ms. Mack stated that one problem with costs was the complete lack of competition on either solicitation. Ms. Fudge agreed that the voting system market place presented a bad situation, but noted that other jurisdictions, like New York, are still moving forward.

OLD BUSINESS

Michael Dawson addressed the Board regarding his August 19, 2009, Petition for a Declaratory Ruling. Mr. Dawson noted that the Board had addressed certain aspects of his petition by changing the voter registration application to include the word "Party" after each listed party. Specifically, Mr. Dawson's petition seeks to have the Board declare the name of the Independent Party invalid because it misleads voters into selecting that party when they are in fact actually seeking to decline to affiliate with any party. To support this allegation, Mr. Dawson sites voter registration statistics that show that the Independent Party has exceeded other non-principle political parties in new registrations. Additionally, Mr. Dawson alleges that the founder of the Independent Party indicates on a website that the party name is meant to be deceptive.

Mr. Darsie responded by again noting that the voter registration application was amended to help address the confusion about which Mr. Dawson is concerned. Mr. Darsie also noted that a Petition for a Declaratory Ruling was an inappropriate means of relief because the Declaratory Ruling process is not meant to determine the rights of a third party. A Declaratory Ruling would only bind the Board and the Constitution Party (whom Mr. Dawson represents). The ruling cannot bind the Independent Party. Further, Mr. Darsie stated that the Board does not have the statutory authority to rule on whether the name of the party is acceptable. State law only authorizes the Board to determine whether the name of a campaign finance entity is deceptive – but here, the name of the campaign finance entity properly reflects the name of the party for which it is established.

Mr. Darsie noted that he was sympathetic to the issues raised but again stated that the Declaratory Ruling process was simply not the right process to seek a remedy. Mr. McManus agreed and stated that the Board is not passing judgment on the merit of the claim and suggested that Mr. Dawson seek legal advice. He also stated that SBE will look into the matter further. Mr. Darsie indicated that the Board could treat the Petition as a Petition for Rule Making.

A motion to deny the petition was made by Ms. Mack and seconded by Mr. Thomann. The motion passed unanimously.

SCHEDULE FOR THE NEXT MEETING

Mr. Walker announced that the next meeting will be held on March 25th at 2:30 pm.

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 the agency's budget submission. Ms. Mack made the motion which was seconded by Mr. McManus and unanimously approved by the Board.

ADJOURNMENT

Ms. Walker adjourned the meeting at 5:09 P.M.