

State of Maryland 

State Board of Elections Meeting –September 22, 2011

Attendees: Robert Walker, Chair
Bobbie Mack, Vice Chair
David McManus, Member
Rachel McGuckian, Member
Linda H. Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeff Darsie, Assistant Attorney General
Donna Duncan, Election Management Director
Nikki Trella, Election Reform Director
Stacey Johnson, Project Manager, MDVOTERS
Jared DeMarinis, Director, Candidacy and Campaign Finance Division
Paul Aumayr, Director, Voting Systems

Keith Ross, Senior Project Management Director

Also Present: Anthony Gutierrez, Wicomico County Board of Elections
Barbara Sanders, League of Women Voters of Maryland
Stan Boyd, Save Our Votes
Sara Harris, Montgomery County Board of Elections
Alisha Alexander, Prince George's County Board of Elections
Nancy Soreng, League of Women Voters of Maryland
Abigail Goldman, Baltimore City Board of Elections
Armstead Jones, Baltimore City Board of Elections
Guy Mickley, Howard County Board of Elections
Lynn Garland
Holly Joseph, Montgomery County
Ty Busch

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:07 pm and declared that a quorum was present. Chairman Walker noted the passing of Chuck Thomann's wife Joyce and, on behalf of the entire board, offered the entire Thomann family their sincere condolences.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the August 25, 2011, board meeting were presented for approval. Ms. Mack made a motion to approve the minutes, and Mr. McManus seconded the motion. The motion was approved unanimously.

ADMINISTRATOR'S REPORT

Ross Goldstein presented the Administrator's Report.

1. Meetings and Important Dates

Mid-Atlantic Election Group Conference Call

The Executive Director of the D.C. Board of Elections organized a conference call for state election officials from states in the mid-Atlantic region. The conference call was held on Tuesday, September 20th, and topics included standard election results reporting,

implementation of Pew's Make Voting Work project entitled ERIC, minority language and accessibility issues, HAVA management, and 2012 election preparations.

Election Directors' Meeting

An election directors' meeting is scheduled for October 11th. In addition to SBE's topics, the local boards will be asked for topics to discuss.

2. **Election Reform & Management**

Memorandum of Understanding (MOU) with University of Maryland College Park

SBE is in its final year of its MOU with College Park to host and manage the voter look-up website (including the online absentee ballot delivery system) and the online campaign finance search. Over the next couple of months, SBE and College Park will be working on a transition plan for the websites. The MOU will end June 30, 2012. The online services hosted by College Park will be taken over and managed internally as part of SBE's website. Ms. Mack asked whether more staff will be needed, to which Mr. Goldstein responded that the website hosting will be supported by existing staff.

Election Preparedness and Professional Development (EPPD) Program

A total of 183 local board staff members have participated in the EPPD program. A spreadsheet was provided showing a county breakdown of the number of courses completed by LBE directors and deputy directors. The spreadsheet also provides a breakdown of the number of staff by the number of courses they have completed.

Rick Urps has established a committee to develop a redistricting course for the EPPD program. The committee includes SBE staff and Guy Mickley, newly appointed director of the Howard County Board of Elections. The committee is charged with designing, scheduling, and presenting to staff of the local boards of elections a class about the redistricting process. The Redistricting Course will first be presented as a trial run to get feedback from attendees and will then be offered twice for local board staff members. It is expected that the classes will begin in late October or early November. The Voter Registration course and the Project Management course will be offered in November or December for local board staff members who did not already complete the courses.

Election Judges' Manual

The 2012 election judges' manual is ready for distribution to and customization by the local boards of elections. Except for one chapter, the manual will be posted on the Online Library this week. One chapter is dependent on the software upgrade to the electronic pollbooks and will be completed once the final software is accepted.

Absentee Ballot Automation

Staff is working on an RFP to procure the services of a vendor to automate all phases of the absentee ballot delivery process. The current process requires the local board staff to manually place a label for each voter on that voter's outgoing envelope and then insert the appropriate ballot style, the return envelope, which includes the voter's return address, standard instructions, and when applicable, specific instructions for the voter (for example, if the voter is pending, show id, he or she will receive instructions on how to comply with the ID requirements).

There are several shortcomings with the current process. First, the local boards have to wait to begin sending absentee ballot packets until all of the ballots are printed and delivered from the printer. Second, since all of the ballots are pre-printed, the local boards have to estimate the needed quantity, usually resulting in numerous unused ballots. Third,

the ballots are typically mailed at a first class mailing rate, which is between 80 cents to over one dollar. Fourth, most of the large LBEs need to hire temporary staff to assist with the process described above. Finally, human error can occur when selecting ballots or ensuring the right ballot gets into the appropriate envelope.

Using digital printing capabilities, the process can be automated to ensure a faster and more accurate process. Further, the money saved by not needing to hire temporary staff and taking advantage of bulk mailing rates will offset the cost of the services. This is an idea being successfully used in several jurisdictions around the country. The plan is to start with three pilot counties for the Presidential Primary Election and then, if successful, provide it statewide for the Presidential General Election.

In response to questions by Ms. Mack, Mr. Goldstein clarified that the vendor will mail the absentee ballots as opposed to sending the absentee ballots back to each county to be mailed. Accordingly, the postmark will reflect the location from which the vendor mails the absentee ballots. Mr. McManus inquired about security, to which Mr. Goldstein responded that the vendor will be required to submit a security plan to ensure that all ballots are accounted for throughout the process.

3. **Voter Registration**

Provisional Voting: Training Guide for Processing and Canvassing Provisional Ballots

This manual has been updated for the 2011-2012 elections. Version 3.0 incorporates recent software changes to MDVOTERS, specifies which reports do not include the names of confidential voters who voted a provisional ballot, and includes changes that improve usability. The updated manual is posted to the Online Library, and the local boards were alerted to the update via the County Bulletin.

Import of Driver License Soundex Numbers

Over the weekend of September 24th, the Canton Group will be importing driver license data received by MVA. We are pleased to report that this brings up the number of Active voters with soundex numbers to approximately 90%. This will go a long way to ensure a more accurate match of data between MVA and SBE as well as identifying duplicate registrations.

Joint Application Design (JAD) Session

From September 26th through the 28th, SBE will host a JAD session to cover development and enhancements to MDVOTERS that will be released throughout 2012. The primary scope is the election workers module and any issues that occurred during the Baltimore City election.

MDVOTERS Yearly Planning

The yearly planning for 2012 will take place September 29th and 30th. The goal of this meeting is to prioritize the release schedule, help desk schedule and contractual issues.

MVA Interface

The Maryland Legislature passed a bill in 2011 requiring that SBE and the Maryland Motor Vehicle Administration (MVA) implement a two-way interface between each agency's system. MVA will step applicants through the voter registration process (with updated software on their touch pads) and send the data to MDVOTERS nightly. The local boards will then process each registration in MDVOTERS, going through the duplicate, felon and DHMH checks and validating the residential address. MVA will receive an updated list of voters from MDVOTERS on a nightly basis so that the MVA will know if the applicant is

updating their existing record or making an initial application. The interface between MVA and SBE is on track and expected to be placed in production the weekend of February 17th.

Request for Bids

A request for bids for a consultant to assist the SBE development team with the MVA/Online Voter Registration project is expected to close September 22nd. A second request for bids is also posted for the hardware needed for these projects.

4. **Candidacy and Campaign Finance**

Candidate Filings

As of September 16, 2011, 17 candidates have filed for office for the 2012 Presidential Election.

Delegate Selection Plans

Delegates and alternate delegates to the national presidential nominating convention of a political party are selected as provided in the national party's rules. The State central committees of each party are required to certify to SBE, not later than October 1st in the year preceding the election, the number of delegates and alternate delegates to be selected in the State, the modes of selection and number of delegates selected from each district. Both parties have submitted their plans.

Republican Delegate Selection plan specifies that three delegates and three alternate delegates are to be elected from each of the eight Congressional Districts. A candidate may only run for delegate or alternate delegate. Only after SBE has received written permission from the presidential candidate may the name of the presidential candidate be placed next to the delegate's or alternate delegate's name on the ballot.

The Democratic Delegate Selection plan provides for 64 congressional district level elected delegates and 8 alternates. The delegates and alternates are apportioned among the 8 congressional districts and will be equally divided by gender. Candidates for delegate may only file candidacy paperwork beginning January 3, 2012 through 9 p.m. on January 11, 2012. A candidate may choose to file as authorized by a presidential candidate or "uncommitted" to any presidential candidates. Those candidates that file as authorized but are not chosen by a presidential candidate will not appear on the primary election ballot.

As in past years, Wicomico County and Washington County Boards of Elections will serve as satellite offices to accept delegate filings. Staff will be making all necessary updates in the ELETrack program to accommodate the plan.

Campaign Finance Reporting

On September 2, 2011, the 2011 Baltimore City Pre-Primary 1 campaign finance report was due for all political committees participating in that election. The Candidacy and Campaign Finance Division has received reports from over 80% of the committees required to file (69% were timely). The remaining committees are late and being assessed late fees. The maximum late fee penalty is \$250.

On September 9th, the 2011 Prince George's Special Election Pre-Primary 2 campaign finance report was due for all political committees participating in that election. The Candidacy and Campaign Finance Division has received reports from over 92% of the

committees required to file (67% were timely). The remaining committees are late and are being assessed late fees. The maximum late fee penalty is \$250.

Required Closures

All of the committees that were required to close by the September 2, 2011, have filed a final report. All but one of these committees were required to close because the candidate associated with the account had not sought elective office for over 8 years. The other committee was required to close because the candidate is exercising general overall control over another political committee, which is not permitted. The Candidacy and Campaign Finance Division is in the process of auditing the submissions prior to officially closing the committees.

Enforcement

On September 7, 2011, the Candidacy and Campaign Finance Division referred *Stop Slots MD 2008* to the Office of State Prosecutor for failure to make disbursements by the treasurer, failure to support a reimbursement payment with receipts, and failure to report each expense associated with the reimbursement. Chairman Walker inquired whether staff worked with the committee prior to the referral. Mr. DeMarinis responded that staff did provide notices to the committee and set up a meeting that the committee did not attend.

5. **Voting Systems**

Baltimore City Mayoral Primary

The voting system was successfully used in the Baltimore City Mayoral Primary. There were approximately 76,000 ballots cast, 10% of those during early voting. Turnout is approximately 23.5%. There were 1,767 voting units used, together with 601 pollbooks, with no major issues. The election, as a whole, went very smooth.

As part of this election, the redesigned election results web reporting process was tested for the first time, which included a city map. The test, which was kept in house, was successful. SBE will be refining the process moving forward.

Prince Georges Special Election

Prince Georges Special Primary Election for County Council District 6 was held on Tuesday. The district has 26 precincts and used 210 voting units with 67 pollbooks. There was a 9.5% voter turnout.

Pollbook Updates

SBE continues to work with ES&S for the upcoming software upgrade for the pollbooks. ES&S is currently working on the 3rd iteration of the upgrade, which is due for delivery to SBE in the first week of October.

Voting Units

The balance of the 8,000 voting unit batteries have shipped, and those will be installed over the coming weeks at the local boards.

6. **Project Management and Information Technology**

Program\Project Management Office

Keith Ross is developing a set of templates and other resources that are to be used for the agency across projects.

Information Technology Strategy Board

Mr. Ross has also established an Information Technology Strategy Board. The Board will be responsible for defining and providing oversight for the agency's short and long term information technology strategy and goals to ensure that they align with the SBE business needs and strategy.

Local Board Visits

Mr. Rosshas scheduled and started conducting visits with each of the local boards. The visits are scheduled to take place over the next 3 months with visits to 2 local boards each Monday. The purpose of these visits is to share the new role of the Assistant Deputy for Project Management and how the roles relates to them and their projects and the election cycles.

Projects

There are several projects being started or already in progress at this time. In addition to the Baltimore City and Prince George's special election currently taking place, planning work is taking place for the 2012 election cycle. In addition, other notable efforts include:

- Being in the midst of working on the Inventory Management Project in two phases. The first phase is the validation of the inventory (e.g. voting system) currently in the database. The second phase will result in the implementation of a new inventory system.
- Started the planning phase for the procurement and implementation of a new optical scan voting system for the 2014 Gubernatorial General Election. We are in the process of documenting the high level proposed timeline for the project. Due to the size and cost of this project we are required to follow the Department of Information Technology (DoIT) requirements for managing projects and are subject to their oversight.

Mr. McManus inquired about whether funding is available for these projects. Mr. Goldstein responded that the 2013 budget is still being developed.

Prince Georges County Special Election

Natasha Walker conducted the ballot programming for the 2011 Prince George's Special Primary Election including recording the English audio ballot with Stacey Johnson and the Spanish audio ballot with a staff member from the Prince George's County Board of Elections. Natasha also provided Prince George's County with screenshots for printing of the specimen ballots. These ballots are posted on SBE's voter lookup site for those voters who will vote in the special election. These same services will be repeated for the upcoming general elections in both Baltimore City and Prince George's County.

Shared Directory for 8 Eastern Shore Counties

A shared directory was created on a central server at SBE for the eight Eastern Shore counties to collaborate on their standard operating procedures files and documents.

Campaign Finance Support

Members of the IT Division provided assistance to campaign committees with their report filing issues and other technical issues, such as database rebuilds.

New Firewall Install

A firewall was installed in collaboration with SBE IT at the Anne Arundel County warehouse by the county IT department. This installation enables the county workstations at the warehouse location to connect securely to MDVOTERS and the Electrack applications.

Other IT Related Events

- Successfully applied Adobe Security updates
- Successfully applied Microsoft Security updates for the month of September on SBE Server Systems
- In process of updating several SBE system (hardware and software) maintenance contracts

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported that there have been several recent developments in *Doe v. Maryland State Board of Elections*, No. 02-C-11-163050 (Circuit Ct., Anne Arundel Co., MD.), the lawsuit challenging the successful referendum petition effort of S.B.167, also known as the Maryland DREAM Act. On September 6, Plaintiffs filed an Amended Complaint which alleges, among other things, that approximately 60,000 petition signatures were validated in error by the State Board. On September 21, Defendants filed their Answer to Amended Complaint. Also on that date, a Motion to Intervene was filed by Judicial Watch on behalf of the petition sponsor, MDPetitions.com. The intervention is not being opposed by either party. On September 22, the parties and the proposed intervenors appeared before Judge Silkworth to present an agreed schedule for the litigation. According to that proposed Order, the parties will file a Joint Stipulation with the Court on November 21, 2011 and briefing on dispositive motions will occur between December 5 and January 20, 2012. A hearing on the case is expected January 27, 2012.

Mr. Darsie also reported that on August 31, 2011, the first day of Early Voting in the Baltimore City primary elections, a complaint and motion for emergency relief was filed in Baltimore City Circuit Court, seeking to halt Early Voting unless and until certain campaign finance disclosures were made by a 7th Councilman District candidate, Belinda Conaway. *Hicks v. State Board of Elections et al.*, No. 24C-11-005616 (Circuit Ct., Baltimore City, MD.) Plaintiff Allen W. Hicks a candidate in the 7th District Democratic primary, sought a temporary restraining order against the State Board and the Baltimore City Board of Elections. At a hearing later that day, Judge Handy denied Plaintiff's motion. Because both Hicks and Conaway lost that election, we anticipate that the case will be dismissed as moot or that the Plaintiff will agree to a voluntary dismissal

REGULATIONS – PROPOSED BY ATTORNEY GENERAL'S OFFICE

The State Board considered two regulations proposed by the Attorney General's Office (OAG). Both regulations were initially proposed at the August meeting, but the Board asked OAG to re-write the proposals. The Board first considered a proposed regulation creating a prohibition against a person making contributions through a legal entity that was not created for a bona fide purpose (COMAR 33.13.09). Alternative proposed language was also presented that focused the prohibition on a person making contributions through the use of a "sham" limited liability company (LLC). Ms. McGuckian asked why the alternative proposal focused specifically on LLCs, and Mr. Darsie responded that "sham" LLCs were a focus of the recommendation by the AG's Commission. Mr. Darsie stated that both versions accomplished the same thing. Both versions also clarify that the prohibition does not apply to a campaign finance entity. Ms. Mack asked who would make the determination of whether an entity was formed for a bona fide purpose, and Mr. DeMarinis responded that the State Prosecutor would make that determination. Mr. McManus made a motion to approve the regulation, without the alternative proposal with the specific reference to LLCs. The motion was seconded by Mr. McManus and unanimously approved.

The second proposed regulation amends COMAR 33.13.06.03 to provide for permissible investment accounts. The proposed regulations provide four types of accounts that may be used. The accounts are deposit accounts at a financial institution insured by the Federal Deposit Insurance Corporation, certificates of deposit with a stated rate of interest and a term of three years

or fewer, obligations of the U.S. Government or its agencies with maturities of three years or fewer, cash management accounts, money market accounts, or money market mutual funds. Ms. McGuckian made a motion to adopt the proposed regulations as presented to the Board, with the following change: replace “permissible accounts or investments include” with “permissible accounts or investments are limited to” to clarify that the options presented in the regulations are the exclusive investment options. The motion was seconded by Mr. McManus and unanimously approved.

REGULATIONS – PROPOSED BY STAFF

Nikki Trella presented regulations to codify certain aspects of the *Instructions and Information for Challengers, Watchers, and Other Election Observers* (manual). Ms. Trella explained that SBE’s former Assistant Attorney General Mark Davis previously advised that documents that directly affect the rights of the public should be adopted as regulations (i.e., be subject to public comment and publication in the *Maryland Register*). Since the manual impacts the rights of individuals who wish to observe the voting process, proposed regulations have been drafted.

Ms. Trella pointed out that the regulations define “accredited challenger or watcher,” “designating entity,” and “non-accredited challenger or watcher.” The proposed definitions derive from the Election Law Article and advice from the Office of the Attorney General. A new subtitle was created in 33.07 (Election Day Activities) relating to challengers and watchers. The new subtitle – 07 Challengers or Watchers – addresses designating individuals as challengers or watchers, specifies permissive and prohibited activities of challengers or watchers, and defines relevant requirements for election judges. The proposal also clarifies that the requirements for challengers and watchers are also applicable during early voting.

Mr. Goldstein noted that the regulations clarify that challengers and watchers are not required to be positioned in the polling place directly behind the check-in judges so that they can see the electronic pollbook. The challengers and watchers only need to be positioned so that they can see and hear the voter as the voter checks-in. This has been a point of some confusion and the regulations seek to clarify the point. Mr. McManus questioned whether there were any limits to the number of challengers and watchers in a polling place. Ms. Trella responded that there were no limits, but generally SBE advises that it should not exceed the number of election judges. Further, if the number becomes unmanageable the election judges have the authority to ask challengers and watchers to leave. This issue has not occurred.

Ms. Trella also presented regulations that change the deadline for receipt of absentee ballots following a gubernatorial primary election from the second Wednesday to the second Friday after the election. Since the General Assembly moved gubernatorial primary elections to June, there is enough time to allow the extra days to receive absentee ballots.

Ms. Mack made a motion to approve the regulations. Ms. McGuckian seconded the motion which was unanimously approved.

APPROVAL OF CHALLENGERS AND WATCHERS MANUAL

Ms. Trella presented three proposed changes to SBE’s *Instructions and Information for Challengers, Watchers, and Other Election Observers* (manual). The first change, consistent with the regulations, requires designating entities to inform the local board that challengers and watchers are being designated. The second change alters the instructions for non-accredited challengers. Consistent with changes to State law, the manual now clarifies that after the election judges have resolved a challenge; the non-accredited challenger must leave the polling place. The final change inserts prohibited acts that have recently been suggested by the Attorney General’s Office and included in the Election Judges’ Manual (interfering with the election process and the

use of electronic equipment in the voting area). Mr. McManus made a motion to approve the proposed changes with a footnote that the requirement to notify the local boards subject to the final adoption of the proposed regulation. The motion was seconded by Ms. McGuckian and unanimously approved.

APPROVAL OF ABSENTEE VOTING MATERIALS

Ms. Trella presented the absentee ballot application for the 2012 Presidential Elections, the late absentee ballot application for the 2012 Elections, and three sets of instructions (one general set of instructions and two sets of instructions for absentee voters who received their ballot electronically or by fax). Ms. Trella noted that all of the forms are consistent with what the Board approved for the Baltimore City Election (with appropriate date and election reference changes). Ms. Trella pointed out that the application permits any voter (not just military and overseas voters) to request delivery of the absentee ballot via the SBE website. The one challenge with permitting absentee delivery via the SBE website is that it is very time consuming and labor intensive to duplicate the ballots sent in from voters who printed the ballots themselves. However, a solution has been identified that will improve the duplicating process. SBE has applied for a grant from the Federal Voting Assistance Program and hopes to use those funds to implement this solution.

WAIVERS OF CAMPAIGN FINANCE LATE FEES

Jared DeMarinis presented 23 campaign finance late fee waiver requests that the State Administrator had recommended for approval.

1. Active Ballot Club Local 27 Educational Fund PAC, A187
2. Baltimore City Fraternal Order Of Police PAC Fund, A746
3. Baltimore County Libertarian Central Committee, A750
4. Beach, Sheri L. Citizens for, A7735
5. Brochin, Jim Committee To Elect, A1112
6. Citizens For Better Government, 8th District Slate, A352
7. Durant, Luke Jr. Citizens For, A9001
8. Ethically Responsible Government/EIGPAC, A8903
9. Fletcher, Pat Friends Of, A5232
10. Guyton, Emmett Friends To Elect, A8292
11. Hethmon, Mike Clean House with, A8451
12. Janusz, (Joseph) For County Commissioner, A6908
13. Jennings, J. B. Friends Of, A3679
14. Kiefaber, (Thomas) Citizens For, A9003
15. Martin, Tom Citizens for, A8856
16. Merkel, Victor F. Friends of, A8809
17. Merryman, Rani Friends Of, A6892
18. Olszewski, John Sr. Friends For, A858
19. Parents Coalition of Mohtgomery County PAC, A4208
20. Plumbers and Steamfitters Local 486 PAC, A270
21. Progress For The People Slate, A4860
22. Restaurant Association Of MD PAC, A323
23. Spencer, Scott for City Council, A9023

Mr. McManus made a motion to approve the recommended waiver requests. The motion was seconded by Ms. Mack and unanimously approved.

APPROVAL OF LOCAL BOARD BYLAWS

Mr. Goldstein presented the amended bylaws from four counties: Harford, Charles, Wicomico and Somerset Counties. Mr. Goldstein noted that all of the bylaws are generally consistent with the

SBE Model Bylaws and any differences are acceptable and do not conflict with State laws, regulations or policy. Mr. McManus made a motion to approve the bylaws. The motion was seconded by Ms. Mack and was unanimously approved.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Chairman Walker stated that Armstead Jones, Baltimore City Election Director, had requested the opportunity to address the Board. Mr. Jones stated that following the Baltimore City Mayoral Primary Election, he received requests for precinct level data. Mr. Jones stated that it was the policy of the Baltimore City Board of Elections not to provide precinct level data until all results are finalized and complete. Mr. Jones and his board believe that providing results while canvassing is still ongoing can cause confusion. Mr. Jones denied the requests. The requestors then went to the State Administrator, and she instructed staff to provide the precinct level results. Mr. Jones stated that he was disturbed by this decision, felt it made him look like he was not being a team player with City officials, and noted a lack of communication from the Administrator about the fact that she was providing the results. A discussion ensued about the release of precinct level election results. It was noted that several counties and SBE consistently provide this information as soon as it is available. Chairman Walker stated that public information must be shared and should not be withheld. He also stated that SBE will continue to provide precinct level data as soon as it is available.

SCHEDULING OF NEXT MEETING

The next meeting was scheduled for October 27, 2011, at 2:00 pm.

ADJOURNMENT

Mr. Walker adjourned the public meeting at 3:15 pm.

CLOSED MEETING

Mr. Walker called for a motion to close the board meeting under State Government Article, §10-508(a)(12) to discuss an investigative proceeding on actual or possible criminal conduct. Ms. Mack made a motion to close the meeting, and Mr. McManus seconded the motion. The motion passed unanimously.

During the closed session members were briefed by the State Administrator on an investigation being conducted by the Office of the State Prosecutor. Ms. Lamone informed the Board that staff made the referral to the State Prosecutor after finding evidence that voter status changes in the voter registration system were intentionally being done improperly and contrary to State and federal law.

In addition to the board members, Ms. Lamone, Mr. Goldstein, Ms. Smith, and Mr. Darsie were present.

No actions were taken.