

State of Maryland 

State Board of Elections – May 18, 2017 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Gloria Lawlah, Member
Linda H. Lamone, Administrator
Nikki Charlson, Deputy Administrator
Shelly Holland, Director, Budget, Finance and Procurement
Keith Ross, Assistant Deputy, Project Management
Paul Aumayr, Director, Voting Systems
Jared DeMarinis, Director, Candidacy and Campaign Finance
Erin Perrone, Director, Election Reform and Management
Mary Cramer Wagner, Director, Voter Registration

Also Present: Mary Ann Keeffe, Member, Montgomery County Board of Elections
Sondra Norrell Thomas, Member, Montgomery County Board of Elections
Bruce Robinson, Member, Baltimore County Board of Elections
Lynn Garland
Ralph Watkins, League of Women Voters

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:00 pm and confirmed that a quorum was present. He stated that the meeting was being recorded and an audio file will be posted on SBE's website.

RATIFICATION OF MINUTES FROM APRIL 20, 2017, MEETING

Mr. Hogan made a motion to ratify the minutes from the April 20, 2017, meeting, and Mr. Cogan seconded the motion. The motion passed unanimously.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

U.S. Election Assistance Commission's (EAC) Meetings

Ms. Charlson attended the EAC's Standards Board meeting on April 27th and 28th in San Antonio. This board has a state and local election official from every state and meets annually. (Katie Brown, the Election Director for the Baltimore County Board of Elections is the local election official from Maryland on the Standards Board.) At this meeting, state and local election officials received briefings from the EAC, the Federal Voting Assistance Program, and the U.S. Department of Homeland Security and approved the draft scope, structure, principles and guidelines of the Voluntary Voting System Guidelines version 2.0. (These documents are the result of the work of the Technical Guidelines Development Committee, of which Ms. Lamone is a member.)

Ms. Lamone will be attending the EAC's Board of Advisors meeting next week in Minneapolis. A summary of that meeting will be included in the next Administrator's Report.

American Bar Association’s Election Law Committee

Mr. Aumayr attended a meeting of the American Bar Association’s Standing Committee on Election Law in Washington, DC. on May 4th. The integrity and security of the electoral process nationwide, including voting machines and the tabulation process, was discussed.

Organization of American States

Mr. DeMarinis was invited by the Organization of American States (OAS) to assist in the Bahamas electoral observation mission as an Electoral Financing Specialist. The overall objective of the mission was to observe the different stages of the electoral process and verify compliance with civil and political rights. The election occurred on May 10th.

Office of Legislative Audit Report and Agency Response

On April 28th, the Legislative Auditor released its audit report from August 23, 2012, to October 22, 2015. The report described eight findings and included our response to each finding. None of the findings were repeat findings. Four of the recommendations have already been implemented and three others are in progress. One recommendation – require certain absentee voters to provide the last four digits of their Social Security number – cannot be implemented without authorizing legislation.

While we concur with facts supporting each finding, we do not agree with the overly broad conclusions made by the Legislative Auditor. For example, Finding 1 relates the reports provided by the Electronic Registration Information Center (ERIC) and processed by the local boards of elections. The Legislative Auditor recommended that SBE review the work of the local boards and verify that the local boards properly processed the ERIC reports, and we agreed to and have implemented this additional step. The Legislative Auditor summarized this finding, however, as a failure to “ensure the accuracy of the data recorded in the voter registration system.” This summary fails to recognize all of the audits that this office and the local boards perform to ensure the accuracy of the voter registration data. On a monthly basis, this office and the local boards audit data entered into the database and how various external reports (e.g., death records provided by the Department of Health and Mental Hygiene) were processed. These audits ensure the accuracy of the data, and the failure to audit the processing of one of many reports should not question the accuracy of voter registration data in general.

Mr. Hogan stated that the headline accompanying the *Baltimore Sun’s* article was misleading and gave the impression that there was a data breach and that the data is in the public. He explained that there was no data breach and the issue of full Social Security numbers being stored in the voter registration database has been addressed. Mr. Hogan noted that the legislative auditors identify issues to correct and are not always correct in their opinions. Audits are conducted every three years and this audit covered 2012 – 2015 but was not released until 2017. Mr. Hogan noted that there were no repeat findings in this audit.

Ms. Howells asked how to ensure that the Electronic Registration Information Center complies with the audit requirements. Ms. Lamone is on ERIC’s board of directors and as a participating member, we can influence the organization’s response to any audit findings. Mr. Hogan explained that the Joint Audit Committee can schedule a hearing in response to an audit report and findings are often included in the Department of Legislative Services’ analysis of the following year’s budget.

2. **Election Reform and Management**

Post-Election Comprehensive Audit

All local boards have received their post-election comprehensive audit reports and have approximately four weeks to submit a written response. Once the response is received, a determination is made whether the response is acceptable and ensure action items have been received.

Polling Place Evaluation Summary

Each local board will receive a summary of its polling place evaluations from the 2016 General Election. The purpose of the summary is to provide local boards with information about issues that may need attention for the next election or compliments that were given by the evaluators. In addition to the report, an Excel spreadsheet details information by precinct and also shows how long it took to complete the evaluation for each precinct.

Election Judge Workgroup

The Election Judge Workgroup met at the end of April to prioritize tasks and develop a time frame to prepare the *Election Judges Manual* and forms for the 2018 elections. The next meeting is May 24th and work will begin on the forms that election judges must complete during early voting and on election day. After the forms are completed, work will then begin on the *Election Judges Manual* for both early voting and election day. It is the goal of the workgroup to have everything completed by January of next year so printing may start in time for training classes to begin around March.

3. **Voter Registration**

Statewide Voter Registration and Candidacy Database (MDVOTERS)

User acceptance testing will begin on version 6.5 on June 5th. Enhancements include additional candidacy reports and development of electronic processing of National Change of Address (NCOA) data received through ERIC.

Electronic Registration Information Center (ERIC)

To date, more than 405,300 records have been updated due to data received. The next reports are scheduled for distribution the beginning of June. SBE will receive five reports - Cross State, Deceased, In-State Duplicates, In-State Updates and NCOA reports.

4. **Candidacy and Campaign Finance (CCF) Division**

Candidacy

As of May 18, 2017, 81 candidates have filed a certificate of candidacy at SBE for the 2018 General Election.

Campaign Finance

Jared DeMarinis reviewed the proposed legislation for the public financing program for Howard County and found that it conformed with State law and policy. Currently, he is working with the Howard County Council on budget costs.

As of May 15th, Montgomery County's public financing program has 14 candidates intending to participate. With the Montgomery County Department of Finance, we are writing a summary guide and developing a training seminar (with a PowerPoint presentation). The summary guide should be finished this month. Montgomery County's program was previously reviewed and cleared for compliance with State laws and policy.

As of May 15, 2017, the Fair Campaign Financing Fund has \$2,794,542.46. Of this amount, \$1,397,271.23 is eligible for the 2018 Primary Election matching program. Based upon current information and data:

- The expenditure limit for the 2018 Election is projected at \$2,655,833.92.
- The seed money qualifying threshold would be \$265,583.39 in eligible private contributions.
- The maximum that candidate could receive in matching funds for the 2018 Primary Election is \$1,327,916. 96.

The fund can fully fund one primary candidate only.

On May 22nd, the CCF Division will conduct a seminar on campaign finance laws and regulations.

Enforcement

On April 19th, Marta Gates-Jones, Campaign Administrator for the Service Station Dealers Political Action Committee, pleaded guilty to felony theft. While serving as Campaign Administrator, Ms. Gates-Jones wrote and cashed 66 unauthorized checks from the campaign account for her personal expenses for a total of \$42,650.00. We referred this matter to the Office of the State Prosecutor after meeting with counsel for the Service Station Dealers Political Action Committee.

On May 19th, two trials for failure to file are scheduled at the Anne Arundel District Court. The committees involved are Citizens to Elect Richard M. Parker and Restore Maryland PAC.

5. Project Management Office (PMO)

Inventory: Excess Equipment Disposal

The first public auction for the over 18,000 legacy touchscreen units and carts ended on May 3rd. There were no bidders on the equipment. Keith Ross met with the Department of General Services' surplus management team to discuss the next steps. It was decided to divide the equipment into separate component parts (TS-R6 units, cases, and carts) and conduct a second auction with smaller quantities. The second auction started May 15th, and a bid has been posted for carts and cases. Based on calls we have received, there appears to be interest in this auction. The auction will close on May 25th.

We will soon submit for auction other legacy equipment types. This includes TSx voting units, optical scan voting units, servers and workstations, and various other equipment and supply items.

New Inventory System

The conversion of the legacy and new equipment and supply items into the new inventory system is complete.

FY 2017 Annual Inventory

The FY 2017 Annual Inventory process has started with SBE's inventory team visiting Anne Arundel and completing the audit on May 15th. The remaining local boards, SBE, and SBE's Warehouse are all scheduled to have equipment and supplies audited and inventoried through mid-July. Each visit includes scanning each item and reconciling what was scanned against the expected inventory.

Other

The re-classifications for the two vacant positions, Technical Writer and IT Systems Technical Specialist, were approved by the Department of Management and Budget. The next steps will be to recruit for the positions.

6. **Voting Systems**

Electronic Pollbooks

We continue to work with ES&S on our requested updates to the pollbook software. We received an alpha version on May 1st and have tested it and provided feedback to ES&S. Brandon Mulvey is scheduled to visit ES&S in Omaha in the first week of June for some additional joint testing in ES&S' testing environment.

Following demonstrating pollbook hardware updates and receiving our feedback, ES&S has refined the prototype and sent prototypes that arrived this week. Another prototype is expected in mid June. On May 10th, the Board of Public Works approved the procurement of 200 of these new pollbooks for use in 2018 and internal batteries for all of the pollbooks.

Municipal Elections

This month, six municipalities used the State's voting system for their elections. These were Taneytown, Hampstead and Manchester in Carroll County, La Plata in Charles County, Rock Hall in Kent County, and Havre de Grace in Harford County. SBE's Regional Managers programmed the election database, generated ballot artwork, and provided support to the local boards and the municipalities. SBE staff also created and provided the pollbook databases.

Pre-Primary Election Testing

SBE has started preparing for some pre-election testing before the 2018 Primary Election. There will be changes with various processes and procedures identified after the 2016 Elections, as well as changes with the pollbooks amongst other systems, and it will be necessary to test these changes prior to next year's elections.

7. **Prior Meeting Updates**

Judicial Watch – Response and Production of Documents

We are working with the Attorney General's Office on a response to the letter dated April 11, 2017, and discussed at last month's meeting. We are reviewing Census and voter registration data and reports of list maintenance activities performed by the Montgomery County Board of Elections to respond to the letter. The letter included an extensive document request, and we are identifying responsive documents. The request for documents is being treated as a request submitted under the Public Information Act.

2017 LEGISLATIVE SESSION – SB 450/HB 353 AND HB 353

Ms. Charlson explained that Senate Bill 450/House Bill 353 prohibits a public body from meeting in closed session after October 1, 2017, unless at least one member of the public body receives approved training on the Open Meetings Act. The bill also requires the public body to complete the Attorney General's *Compliance Checklist for Meetings Subject to the Open Meetings Act* if the designated member does not attend an open meeting. Mr. McManus asked that an item be added to the July meeting agenda about this requirement and asked for the link to the online training.

Ms. Charlson explained that House Bill 353 requires pre- and post-meeting notice requirements when the State Board or a local board is considering a change to an administrative policy

affecting voting rights. She noted that the following agenda items would trigger the notice requirements: (1) new regulations or changes to existing regulations relating to voter registration, provisional voting, and absentee voting; (2) new polling place or changing the location of an existing polling place, or (3) new early voting center or changing the location of an early voting center would trigger the notice requirements.

REQUESTS FOR DECLARATORY RULINGS

Petition for Declaratory Ruling Submitted by Claudia Barber

Ms. Charlson explained that Ms. Barber asked the State Board to issue a declaratory ruling on whether she can use campaign funds to pay legal expenses she incurred in the course of an ethics investigation related to her former employment. Ms. Charlson recommended that the State Board deny issuing a declaratory ruling in this case because the purpose of a declaratory ruling is to explain how the State Board would apply a regulation, order or statute. Since the Candidacy and Campaign Finance Division has already determined that Ms. Barber cannot use campaign funds for this purpose, her request is not related to a prospective event but is retroactive and is a request to reverse a determination already made by the Division. In response to a question, Ms. Charlson explained that Regulation 33.01.02.01 of the Code of Maryland Regulations uses the verb “would” to show that this process is used to seek a prospective determination.

Mr. Cogan made a motion to deny issuing a declaratory ruling, and Mr. Hogan seconded the motion. The motion passed unanimously. Ms. Charlson will provide Ms. Barber with the memo explaining the basis for the recommendation to deny issuing a declaratory ruling.

Petition for Declaratory Ruling Submitted by George Gluck

Mr. DeMarinis explained that Mr. Gluck asked the State Board to issue a declaratory ruling on whether he can seek nomination by petition for federal office if he is affiliated with the Green Party. He explained that the nomination by petition process is available to candidates who are not affiliated with any political party. In response to a question, Mr. DeMarinis explained that there are no federal laws that impact this decision. While qualifications for federal office are established by federal law, ballot access laws are the authority of the state.

Mr. Cogan made a motion to accept Mr. DeMarinis’ recommendation to issue a declaratory ruling as requested by Mr. Gluck and decide that an individual cannot be a member of a political party and seek nomination by petition for a federal office, and Mr. Hogan seconded the motion. The motion passed unanimously.

Petition for Declaratory Ruling Submitted by James V. McMahan, Jr.

Mr. DeMarinis explained that Mr. McMahan asked the State Board to issue a declaratory ruling on whether he can use “Capt’n Jim” or “Captain Jim” as a legal ballot name. He explained that State law prohibits the use of titles or professional designations, and as Captain is a military rank and a professional designation for police and fire departments, it should not be used as a legal ballot name. In response to questions, Mr. DeMarinis responded that the use of “Captain” on the ballot was denied in a prior declaratory ruling and that there have not been any legal challenges related to a candidate’s name that complies with Election Law Article, §5-301(c)(3) (nickname allowed) but does not comply with §5-301(c)(4) (titles, degrees, and professional designations).

Mr. Hogan made a motion to accept Mr. DeMarinis’ recommendation to issue a declaratory ruling as requested by Mr. McMahan and decide that neither “Captain Jim” nor “Capt’n Jim” can be used as a legal ballot name, and Ms. Howells seconded the motion. The motion passed unanimously.

ASSISTANT ATTORNEY GENERAL'S REPORT

There was no Assistant Attorney General's Report.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from 16 committees to waive late fees incurred by the committees. The requesting committees are:

1. Barlow, Gary Citizens to Elect
2. Bolourian, Neda Friends of
3. Chew, Hosea T. Friends of
4. Douglas, Robert A. Friends of
5. Ensor, Julie Friends of
6. Evans Arthurs, Maureen Friends of
7. Friends of Volunteer Fire and EMS of Washington County PAC
8. Haffner, Julian A. Friends of
9. Lindner, Genevieve for State Delegate
10. Mechanical Contractors Assoc. of MD PAC
11. Oppenheim, Todd Equal Justice Group for
12. Pickrum, William, Friends of
13. Royalty, Ahmed the Citizens for
14. Scanlan, (Dorothy) Citizens for
15. Wicomico Co. Fraternal Order of Police Lodge III PAC
16. Wilson, Thea Friends of

Mr. DeMarinis explained that the State Administrator denied two waiver requests in May and that SBE has collected over \$25,000 in late fees in 2017. No action is needed on denied requests.

Mr. Hogan made a motion to grant the requests for waivers of late fees, and Mr. Cogan seconded the motion. The motion passed unanimously.

APPROVAL OF REQUEST FOR ADMINISTRATIVE CLOSURES

Mr. DeMarinis presented requests for administrative closure of the Friends of Ronald Anthony Mills committee and People for (Michael) Pearson. The Office of the State Prosecutor has determined that the committee is unable to pay the debt and recommends administrative closure of this committee.

Mr. Hogan made a motion to close administratively this committee, and Ms. Howells seconded the motion. The motion passed unanimously.

APPROVAL OF REQUESTS FOR CONFIDENTIALITY

Mr. DeMarinis presented one request to designate certain information confidential and protected from public disclosure. Mr. McManus confirmed that the requesting voter is a judge.

Ms. Howells made a motion to grant the request, and Mr. Hogan seconded the motion. The motion passed unanimously. The three requests tabled at the April meeting remain in pending status while the Attorney General's Office is completing its review of the requests.

OLD BUSINESS

Ms. Howells asked about the web language related to the absentee ballot, and Ms. Charlson explained that the first step is the absentee ballot application, not the website language.

Ms. Howells stated that she retracted her statements that Schreiber Translations does not stand by its translations and expressed her concern with local boards of elections translating language for the ballot. She stated that there needs to be a policy to address local board translation of ballot language. Ms. Charlson will contact the Prince George's County Board of Elections to

determine the impact of a translation policy. In response to a question, Ms. Lamone explained that SBE obtains a translation of all State ballot questions.

Mr. McManus stated that he received a letter from the Montgomery County Board of Elections about the use of the ballot marking device in the 2018 elections and wants to obtain information from ES&S about why the navigation concerns were not resolved for use in the 2018 elections. Mr. McManus asked that he and Ms. Charlson draft a letter to ES&S requesting this information.

NEW BUSINESS

There was no new business.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan reported that he contributed \$60 to Friends of Doug Arnold and \$50 to Friends of Wes Adams and will be contributing on May 18, 2017, \$80 to Friends of Lance Richardson.

Ms. Howells reported that she contributed \$15 to buy tickets to a function sponsored by the Southern Prince George's County Republican Club.

Ms. Lawlah reported that she contributed \$500 to Friends of Calvin Hawkins and \$66 to Friends of Tony Knotts.

Mr. Hogan reported that he contributed \$100 to Friends of Barry Ciliberti.

CONFIRM NEXT MEETING

The next meeting is scheduled for Thursday, June 22, 2017 at 2 pm.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the meeting, and Mr. McManus seconded the motion. Mr. McManus adjourned the meeting at 3:21 pm.