

State of Maryland 

State Board of Elections – January 12, 2021 Meeting

Attendees (via conference call):

Michael R. Cogan, Chair
Patrick J. Hogan, Vice Chair
William G. Voelp, Member
Malcolm L. Funn, Member
Severn Miller, Member¹
Linda Lamone, Administrator
Andrea Trento, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Jared DeMarinis, Director, Candidacy and Campaign Finance
Mary Cramer Wagner, Director of Voter Registration
Keith Ross, Director of Project Management
Tracey Hartman, Director of Special Projects
Art Treichel, Chief Information Security Advisor
Fred Brechbiel, Chief Information Officer
Keith Ross, Assistant Deputy, Project Management

Also Present: Senator Cheryl Kagan
Andy Ellis, Maryland Green Party Coordinating Council

DECLARATION OF QUORUM PRESENT

Mr. Cogan called the meeting to order at 2:01 pm. After taking roll call and declaring a quorum of four members. Mr. Cogan stated that the meeting was being livestreamed. He also stated that Mr. Miller would be the new member of the Board. Mr. Miller stated that he has been commissioned but not yet sworn in.

ADDITIONS TO THE AGENDA

There were no additions to the agenda, however Mr. Cogan stated that there were two speakers and they would speak at the appropriate time, not under “New Business” (item 13). He also stated that he would reserve the Chairman’s remarks until the end of the agenda.

APPROVAL OF MINUTES

Mr. Hogan made a motion to approve the minutes from the December 4, 2020 meeting, and Mr. Voelp seconded the motion. The motion passed unanimously.

SPEAKER- SENATOR CHERYL KAGAN

Senator Kagan introduced herself as the State Senator from Rockville and Gaithersburg, and the Vice Chair of the Education, Health, and Environmental Affairs (EHEA) Committee. She thanked the board members, SBE staff, and local boards of elections staff for their hard work on the elections last year. She welcomed Mr. Miller and stated that she looks forward to getting to know and working with him.

Senator Kagan stated that she will be introducing three election-related bills to the legislature this year. The first bill is regarding recount committees, specifically the rules regarding recounts in jurisdictions with public campaign financing. She stated that she has worked with Mr.

¹ Mr. Miller’s commission has been issued, and he is awaiting being sworn in as a member of the State Board of Elections.

DeMarinis and Delegate Anne Kaiser on this bill. The second bill modifies and expands the membership of the State Board from five to seven members to include different expertise on the Board. She stated that she has worked with the Maryland Association of Counties (MACo) on this bill, and that MACo is presenting this bill as one of its legislative priorities for 2021. The final bill, which she called the “kitchen sink” bill, which includes miscellaneous election provisions, including early voting hours, ballot drop off boxes, ballot access, privacy envelopes, canvassing, and tabulating. She stated that 16 items are covered in the bill, but that ranked choice voting and the issue of whether to automatically mail a voter a ballot application or a ballot were not included. She is proposing in this bill to change the definition of “majority party” at the local level for local boards of elections to reflect voter registration trends instead of following the party of the Governor as the majority party.

ADMINISTRATOR’S REPORT

Mr. Cogan stated that only highlights of the Administrator’s Report would be presented verbally, but that the full report is available on the SBE website.

Announcements & Important Meetings

Legislative Briefing

Ms. Charlson stated that at the start of each legislative session, the General Assembly’s two committees with jurisdiction over election bills - the Senate’s EHEA Committee and the House of Delegates’ Ways and Means Committee - request election briefings. EHEA’s briefing is scheduled January 14, and the Ways and Means’ briefing is scheduled for January 22. At these briefings, we will provide an overview of the 2020 General Election and election-related activities planned for 2021.

2020 General Election Overview

General Election Statistics

Ms. Charlson stated that there is a full array of reports from the general election available on SBE’s website under the Press Room page.

Electoral College

On December 14, 2020, Maryland’s ten Presidential Electors met in the State House to certify the election for President and Vice-President. Ms. Charlson thanked Mr. DeMarinis, Ebony Parran, Erin Dennis, Ms. Duncan, Rachel Rachfal, and Natasha Walker for their efforts in preparing for, coordinating, and running the event. Due to the pandemic, the event was livestreamed.

Voter Education Campaign Report

Ms. Charlson stated that the [report](#) of the public education campaign, with extensive graphics used in the campaign, was provided in early December and posted on our online Press Room under the “2020 General Election Press Releases, Public Relations and Voter Outreach” heading.

Voting Equipment Performance

Ms. Charlson stated that tables showing the quantities of voting equipment deployed for early voting and election day are included in the full Administrator’s Report. Overall, the voting equipment performed well.

Post Election Audits

Automated Ballot Tabulation Audit: Ms. Hartman reported that the online portal for the automated ballot tabulation audit is now live and can be accessed from [SBE’s Ballot Audit webpage](#) or directly at <https://maryland.clearballot.com/>.

Manual Audit: Local boards have started planning for the manual audit of randomly selected ballots, which must be completed within 120 days of election day. Five local boards have scheduled their audits with the first audit scheduled on January 15 at the Anne Arundel County Board of Elections. Ms. Hartman stated that she will report more when the manual audits are complete.

Voter Registration

Joint Application Design (JAD)

Ms. Wagner stated that SBE is planning a JAD meeting for January 25 - 28. JAD meetings are conducted to prioritize MDVOTERS issues and enhancements for the upcoming calendar year.

User Acceptance Testing (UAT)

UAT is currently underway for the 7.4 MDVOTERS release. This release primarily focuses on issues identified in the candidacy module as well as enhancements, and is scheduled to go into production in late January of 2021.

MVA Transactions

During December, MVA collected the following voter registration transactions:

New Registrations - 9,084	Residential Address Changes - 22,974
Last name changes - 2,527	Political Party Changes - 4,944

Candidacy and Campaign Finance (CCF) Division

Mr. DeMarinis reported that Vicki Molina has retired from SBE after 25 years of service. We thank Vicki for her efforts with the Candidacy and Campaign Finance Division and wish her all the best in future endeavors.

Candidacy for the 2022 Election Cycle

Mr. DeMarinis stated that February 23, 2021 is the first day candidates can file paperwork for the 2022 Gubernatorial Election cycle. Systems are being prepared to accept the candidate information at the State and local offices, and SBE is developing a process for candidates to make an appointment to file the paperwork.

Campaign Finance

Mr. DeMarinis stated that the annual campaign finance report is due January 20, 2021, and that fundraising for members of the General Assembly and statewide officeholders must end when the 2021 Legislative Session begins on January 13, 2021 at 12 noon. Mr. DeMarinis clarified that the fundraising prohibition includes sending out "Save the Date" notices for a fundraiser that will take place after the legislative session. Mr. DeMarinis stated that he would update the Board on enforcement actions taken by CCF at the next meeting.

Voting Systems Division

Voting System Upgrade

Mr. Brechbiel reported that SBE is in the planning stages of implementing an upgrade to the election management suite for the voting system and that SBE expects to begin initial testing of the new suite in February 2021.

Project Management Office (PMO)

Inventory Management

Mr. Ross reported that SBE is actively auctioning and recycling equipment and supplies.

FY2022 Pollbook Project

Mr. Ross reported that the due date for the RFP responses is January 25. The project team is planning and preparing for the evaluation phase of the procurement when the responses are received.

Other

The Central Warehouse team continued to work on a number of activities and events at the facility, including the moving and outgoing of supplies.

In response to a question from Mr. Funn, Mr. Ross stated that that the total cost of the pollbook project projected, including resources and equipment, to be \$31 million, but that the cost is expected to decrease as we learn more information.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Trento gave an update on the following cases:

1. *Fusaro v. Davitt et al.*, No. 20-1879 (U.S.C.A. for the 4th Cir.). Mr. Trento stated that Plaintiff has appealed to the United States Court of Appeals for the Fourth Circuit, and briefing is now complete. Oral arguments have not yet been scheduled.
2. *National Federation of the Blind, Inc., et al. v. Lamone et al.*, No. 1:19-CV-02228-ELH (U.S. District Court, D. Md.). Mr. Trento stated that this case is regarding usage of ballot marking devices in Maryland. On November 12, 2020, the parties filed a joint motion to stay the case for 60 days to allow for a focused period of settlement discussions, which was also granted by the Court. The stay was set to expire on January 11, 2021, however it has been extended by 14 days and is now set to expire on January 25, 2021.

APPROVAL OF SBE BYLAWS

Mr. Cogan stated that review of SBE's bylaws is a routine action performed by the Board. In response to a question from Mr. Voelp and Mr. Cogan, Mr. Trento stated that by reviewing the bylaws at its first meeting of the year, the Board is fulfilling its duty as required by the bylaws, but that does not preclude the Board from reviewing the bylaws at other meetings also. In response to a question from Mr. Cogan, no members objected to the bylaws as currently written or proposed a change. Mr. Trento advised that any new members who have not signed the current bylaws should do so. Ms. Charlson stated that staff would distribute a version of the bylaws for new members to sign.

APPROVAL OF LATE FEE WAIVERS

Mr. DeMarinis presented a request from seven campaign committees to waive late fees incurred by the committee. Seven campaign committees were denied waivers of late fees and were presented to the board for informational purposes.

The committees requesting a waiver of late filing fees were:

1. Ebling, Bryan for Board of Education
2. Fritz, Richard D. Bi-part.Comm For The Re-election of, State
3. Libertarian Party Of Maryland
4. Siddiqui, Janet Friends of
5. Smith, Steven Heelers for Baltimore

6. Somerset County Republican Central Committee
7. Williams, Bryan for School Board

Mr. Hogan made a motion to approve the waiver requests, and Mr. Voelp seconded the motion. The motion passed unanimously.

APPROVAL OF FINAL REGULATIONS- COMAR 33.17.06.05- EARLY VOTING (EARLY VOTING ACTIVITIES)

Ms. Charlson presented a proposed amendment to COMAR 33.19.06.05 – Early Voting – Early Voting Activities – Ballots – In General for final adoption. These proposed regulations were approved by the Board at its October 8, 2020 meeting and published in the November 20, 2020, issue of the *Maryland Register* (Vol. 47, Issue 24). The public comment period closed on December 21, 2020. Ms. Charlson stated that no public comments were received.

There was no discussion on the adoption of the proposed regulation as final. Mr. Voelp made a motion to adopt the proposed regulation for final publication, and Mr. Hogan seconded the motion. The motion passed unanimously.

CONSIDERATION OF SBE POLICY 2020-02- ELECTRONIC PETITION SIGNATURE ACCEPTANCE EXTENTION

Mr. Cogan stated that the second of the two approved speakers is speaking regarding SBE Policy 2020-02: Electronic Petition Signature Acceptance Extension, and would therefore speak at this point in the agenda.

Speaker- Andy Ellis, Maryland Green Party Coordinating Council

Mr. Ellis stated that action needs to be taken on Policy 2020-02 because it expires tomorrow, January 13, and that COVID is very much still with us. He stated that, as long as we are in the middle of a pandemic, there is a need to accept electronic signatures for charter amendments, independent candidates, and new party applications.

In response to a question from Mr. Cogan asking if there were any active petitions or new party registration campaigns currently, Mr. Ellis stated that, while the answer depends on how you define “active,” that there is one new party registration campaign underway, and a few charter amendment campaigns.

Board Discussion

In response to questions from Mr. Cogan and Mr. Voelp, Mr. DeMarinis stated that there is a bill in the 2021 Legislative Session that authorizes the use of electronic signatures and allows the State Board the authority to codify the details through regulations. He explained that the bill does not get into the specifics due to the ever-changing nature of technology. Ms. Duncan added that, unless the law is specified as an emergency, it would not go into effect until October 1, therefore the time between now and then needs to be addressed.

In response to a question from Mr. Hogan, Mr. Ellis stated that his organization is seeking an extension of the policy until the State of Emergency is lifted or until superseding law is passed.

In response to a question from Mr. Voelp regarding if emergency regulations would be the correct path for the Board on this topic, Mr. Trento advised that emergency regulations are not needed and that the Board can codify the policy later if the policy becomes permanent. After further discussion, Mr. Cogan clarified that there are two parts to be decided by the Board. The first is whether to extend the deadline, and the second, if the Board decides to extend the deadline, the

date when the extended policy would expire. Mr. Voelp suggested extending the deadline until the May meeting to give staff enough time to digest legislation passed by the General Assembly, and Ms. Lamone agreed.

Mr. Hogan made a motion to extend the policy enumerated in SBE Policy 2020-01, and subsequently extended in SBE Policy 2020-02, until May 27, 2021, and to direct the staff to prepare materials reflecting the Board's decision as indicated by the Assistant Attorney General, and Mr. Funn seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

SPEAKERS

There were no additional speakers.

CHAIRMAN'S REMARKS

Mr. Cogan announced that this meeting is his second to last as a member of the Board, stating that he and his wife are moving out of state. He stated that he will make further final remarks in February, but had remarks that are pertinent now.

Mr. Cogan, in addressing the other members regarding their role in the election process, stated that it is not sufficient that an election is fair and honest, but it must also be seen as fair and honest. He closed by charging the other Board members to decide each time that Maryland elections will be seen as fair and honest.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan disclosed the following campaign contributions:

- | | |
|------------------------------------|---|
| 1. McConnell for Senate - \$216.65 | 5. National Republican Congressional Committee - \$50 |
| 2. Scott for Senate - \$50 | 6. National Republican Senate Committee - \$1,860 |
| 3. Loeffler for Senate - \$616.65 | 7. Trump for President - \$25 |
| 4. Perdue for Senate - \$916.65 | |

SCHEDULE NEXT MEETING

The next two meetings are scheduled for Thursday, February 11, at 2 p.m.; and Thursday, March 25 at 2 p.m.

CLOSED SESSION- LEGAL ADVICE AND SECURITY BRIEFING

Mr. Cogan requested a motion to close the board meeting under General Provisions Article, §3-305(b) (7) and (8), which permits closing a meeting to consult with counsel to obtain legal advice and with staff about pending or potential litigation. Mr. Funn made a motion to convene in closed session under General Provisions Article, §3-305(b)(1), (7), and (8), and Mr. Hogan seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions defined in (b)(7), and (8) of Section 3-305 of the Open Meetings Act to receive advice from counsel and consult with staff about pending or potential litigation.

The closed session began at 3:15 pm. Mr. Cogan, Mr. Hogan, Mr. Funn, Mr. Voelp, and Mr. Miller attended the closed meeting. In addition to the board members, Ms. Lamone, Ms. Charlson, Mr. Trento, and Ms. Duncan attended the closed meeting.

Mr. Trento provided legal advice and the board consulted with staff on potential or pending litigation.

Mr. Hogan left the meeting at 4 pm.

No actions were taken.

Mr. Funn made a motion to adjourn the closed meeting, and Mr. Voelp seconded the motion. The motion passed 4-0.

The closed meeting adjourned at 4:08 pm.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the open meeting, and Mr. Voelp seconded the motion. The open meeting adjourned at 3:09 pm.