

**State of Maryland** 

**State Board of Elections – October 28, 2021 Meeting**

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Attendees (via conference call):

William G. Voelp, Chair  
Malcolm L. Funn, Member  
Severn Miller, Member  
Justin Williams, Member  
T. Sky Woodward, Member  
Linda Lamone, Administrator  
Nikki Charlson, Deputy Administrator  
Andrea Trento, Assistant Attorney General  
Donna Duncan, Assistant Deputy, Election Policy  
Mary C. Wagner, Director of Voter Registration  
Jennifer McLaughlin, Senior Policy Advisor  
Jared DeMarinis, Director, Candidacy and Campaign Finance  
Keith Ross, Assistant Deputy, Project Management  
Shafiq Satterfield, Director of IT Project Management  
Art Treichel, Chief Information Security Officer  
Melissia Dorsey, Director of Election Reform and Management

Also Present: David Garreis, Acting Director, Anne Arundel County Board of Elections, and President, Maryland Association of Election Officials (MAEO)  
Ruie Lavoie, Election Director, Cecil County Board of Elections, and Vice President, MAEO

**DECLARATION OF QUORUM PRESENT**

Mr. Voelp called the meeting to order at 2:03 pm and declared that a quorum was present.

**ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

**APPROVAL OF MEETING MINUTES: SEPTEMBER 9, 2021**

Ms. Woodward made a motion to approve the minutes from the September 9, 2021 open and closed meetings. Mr. Williams seconded the motion. The motion passed unanimously.

**ADMINISTRATOR'S REPORT**

Mr. Voelp requested that only highlights of the Administrator's Report be presented verbally.

**Announcements & Important Meetings**

National Association of State Election Directors' (NASED) "Managing After 2020" Presentation

On several days, NASED offered state and local election officials around the country a presentation entitled "Coping with Death Threats and Traumatic Events in the Line of Duty." The presentation was initially given at the NASED summer conference and was so well received that NASED asked Dr. Tim Hoyt of the Defense Health Agency's Psychological Health Center of Excellence if he would offer his presentation to a wider audience. The invitation was shared with all SBE and local board staff members, and many attended the presentation.

Department of Legislative Services' Intergovernmental Matters and Public Administration Workgroup

On September 23, the workgroup invited SBE to attend a meeting to discuss the impact of the redistricting process, implementation of election administration legislation passed during the

2021 Legislative Session, and budget and cost sharing information. The workgroup members seemed appreciative of the information we provided.

#### Maryland Cybersecurity Council - Quarterly Meeting

On October 13, Ms. Lamone attended the quarterly meeting of the Maryland Cybersecurity Council, a legislatively created body led by Attorney General Brian Frosh and of which I am a member. The main presentation was on cybersecurity in the electric utility sector, which was very interesting.

#### U.S. Election Assistance Commission's (EAC) Technical Guidelines Development Committee (TGDC)

On October 13, the TGDC met virtually to discuss the implementation of the Voluntary Voting System Guidelines (VVSG) 2.0 standard, the proposed lifecycle policy, and the process to evaluate and approve protocols for end-to-end verifiable voting systems, and other non-voting system related topics. The members of the TGDC, created under the federal Help America Vote Act, are election officials (including me representing the EAC's Board of Advisors), technical experts, and individuals representing advocacy organizations and are tasked with developing the VVSG with support from the National Institute of Standards and Technology.

#### Election Directors' Meeting

On October 21, we held an election directors' meeting. During this meeting, we shared information about USPS' expected postage increases in 2022, "save the date" information for SBE's tabletop exercise for the SBE and the local boards, implementing legislation from the 2021 Legislative Session, and on-going activities related to preparing for the 2022 elections. All local boards were represented on the call. A summary of the meeting will be distributed via the County Bulletin when it is drafted.

#### **Election Reform and Management**

##### 2021 Student and Military Voter Empowerment Act

[Chapter 657 \(Senate Bill 283\)](#) and [Chapter 656 \(House Bill 156\)](#) of the 2021 Legislative Session require that the local boards notify certain large residential communities when establishing precinct boundaries and designating polling places. We issued guidance to the local boards regarding these notice requirements and published them in the October 8, 2021 County Bulletin.

##### Mail-In Voting: Usability Review

Work continues with the University of Baltimore and the Center for Civic Design on implementing the usability review required by [Chapter 56 \(Senate Bill 683\)](#) and [Chapter 514 \(House Bill 1048\)](#) of the 2021 Legislative Session.

##### Mail-In Ballot Request Form Mailer

We are working with incumbent vendor, Runbeck, to prepare for the mailing of mail-in ballot request forms in early February 2022. This mailing is required by [Chapter 56 \(Senate Bill 683\)](#) and [Chapter 514 \(House Bill 1048\)](#) of the 2021 Legislative Session.

##### Mail-in Voting: Procurement and Vendor Selection

Ms. Charlson stated that after a competitive procurement and reviewing sample ballots, ballot packets, and technical and financial proposals from six vendors susceptible for award, we selected Taylor Communications to print, insert and mail ballot packets for the 2022 elections. Taylor was ranked first overall and had the top-ranked technical proposal and the second-ranked vendors' financial proposal. They printed and mailed ballot packets over 1.7 million ballot packets to Maryland voters in the 2020 General Election, and we look forward to

working with them. We expect that this contract will be on the Board of Public Works' agenda in December.

## **Voter Registration**

### MDVOTERS

Ms. Wagner reported that development for the December release continued. This release finalizes the requirements to implement the permanent absentee ballot list and MVA's new driver license system configurations.

### MDVOTERS Audits

On a monthly basis, audits are performed on the local boards of elections' processing of Electronic Registration Information Center (ERIC) reports, Department of Health and Mental Hygiene (DHMH) death records, Administrative Office of the Courts (AOC) felony records, and the processing of overall voter registration records. Follow up is conducted with the local boards to ensure all corrections are completed and to address any training issues. On a monthly basis, a minimum of 144 audits are conducted.

### ERIC - Membership

Ms. Wagner shared that Maine is the latest state to join ERIC. This brings ERIC's total membership to 31 states plus the District of Columbia. For more information on ERIC, please visit <https://ericstates.org/>.

### ERIC Files

We are now receiving ERIC data on a monthly basis. On even months (February, April, etc), we receive the In-State Updates, Cross-State, and NCOA (National Change of Address) reports for processing. Odd months bring us the In-State Duplicate and Social Security Administration Death files for processing. As we approach an election and are prohibited from list maintenance mailings (90 days prior to an election), we will receive the In-State Duplicate and SSA Death files on a monthly basis.

### MVA Data Comparison

SBE received from MVA data on individuals who surrendered their Maryland driver's license to another state and address information for voters who are currently in an "inactive" status in Maryland's statewide voter registration database (MDVOTERS) and compared this data against information in MDVOTERS.

Ms. Wagner stated that using MVA's data, we identified 4,948 "active" voters who surrendered their Maryland licenses to another state and 1,915 voters in an "inactive" status where the address we have on file is different from the address on file with MVA. We sent letters to these voters' Maryland registration addresses requesting that the voters verify their information. While we cannot provide a definite number of records impacted, about 1,010 records have been cancelled from August 15, 2021 through October 25, 2021, the timeframe when the mailings were sent.

Moving forward, MVA and SBE will continue to do this data comparison on a quarterly basis and mail letters to those identified voters and we will also create a unique identifier within MDVOTERS that will allow the local boards of elections to capture this information for future statistics. The next mailing is expected to occur at the beginning of December.

In response to a question from Mr. Voelp, regarding what happens when the letter Ms. Wagner referenced is either not returned or is returned undeliverable, Ms. Wagner stated that when mail to an active voter is returned undeliverable, that voter becomes listed as inactive. If that voter does not update their registration or vote within two federal elections, the voter will be cancelled. Ms. Wagner further explained that if the letter she referenced is not returned (or any mail piece requesting a response, there is nothing in federal law that allows SBE to cancel a voter registration without hearing from the voter, except in the previous scenario.

### Motor Vehicle Administration (MVA) Transactions

During July, MVA collected the following voter registration transactions:

New Registration - 10,638	Residential Address Changes - 22,111
Last Name Changes - 2,883	Political Party Changes - 4,640

### Non-Citizen Registration and Voting

During September 1, 2021 through October 25, 2021 a total of 37 voters have been cancelled due to non-citizen. One individual has voting credit and will be referred to the Office of the State Prosecutor.

## **Candidacy and Campaign Finance (CCF) Division**

### Candidacy

Mr. DeMarinis reported that candidacy filings continued to be scheduled by appointment, and as of October 19, 155 candidates have filed at SBE.

### Campaign Finance

#### *Upcoming Reports*

The next campaign finance report due is the January 2022 Annual Report. However, independent expenditure entities and Super PACs must file disclosure reports within 48 hours after making disbursements or expenditures of \$10,000 or more.

Next month, the semi-annual Contribution Disclosure Statement is due on November 30. This report is due for any person doing business with a governmental entity of \$200,000 or a person who employs a State lobbyist and makes contributions of \$500 or more in a filing period.

#### *State Public Financing Program*

One gubernatorial ticket has filed a notice of intent to participate in the program. This is the third consecutive election where a candidate has filed to participate in the public financing. In order to qualify for a public contribution, the candidate must raise \$120,000 from 1,500 Maryland residents. As of September 30, there is \$4,119,374.72 in the Fund. In the next fiscal year, additional \$4,000,000 will be appropriated to the Fund.

#### *County Public Financing Programs*

Montgomery County: There are four certified candidates in the program. The program has made a total of \$234,342 in disbursements. One certified candidate cannot receive a disbursement because the candidate is currently uncontested in the primary election. Committees may file matching fund requests on the first and third Tuesday of every month. Sixteen other candidates have filed a notice of intent to participate in the program.

Howard County: Four candidates have filed a notice of intent to participate in the program. No candidate has submitted a report for certification.

### Website Activity

In September, the MD Campaign Reporting Information System (MD CRIS) website was visited by 221,065 individuals for an average of 7,368 per day. Additionally, it had 1,731,341 hits. Each viewer looked at an average of approximately 6.5 page views per day. The Business Contribution Disclosure System (BCDS) website had 901,924 hits, with 37,699 visitors with an average of over 23 page views per day.

### Enforcement

1. Allegany County Democratic Central Committee paid \$300.00 on September 17, 2021 for failing to record or report expenditures and contributions on a campaign finance report.
2. Friends of William Cole committee paid \$500.00 on September 21, 2021 for failing to record or report expenditures and contributions on a campaign finance report.
3. Friends of Tim Willard committee paid \$600.00 on October 5, 2021 for failing to record or report expenditures and contributions on a campaign finance report and making an unauthorized cash disbursement - cash greater than \$25.00.

### Election Observation

Mr. DeMarinis reported that he served as the Political Finance Expert in the Organization of American States' (OAS) election monitoring mission for the September 16 Parliamentary elections in the Bahamas. The entire Parliament (39 seats) was up for election. The election had many challenges with the pandemic including a nationwide curfew of 9:00pm. All voting is in person. One of the bigger issues was allowing eligible individuals in quarantine to vote, which had an effect on turnout. In comparison to other elections, turnout was low; only in the upper 70. Additionally, this was the first election where the Bahamas instituted a permanent voter registration list. In past elections, the entire population would have to register to vote prior to the election. While a campaign promise from the prior election, campaign finance disclosure never occurred. In the Bahamas, there are no campaign disclosure requirements of any kind nor limits on the amount of money received or the source. Overall, the election went smoothly as well as the mandatory hand recount the following day. Everyone was masked and patient with the process of voting and cleaning.

In response to a question from Mr. Funn, Mr. DeMarinis stated that, in Maryland, candidates are permitted to fundraise prior to filing for a specific office.

### **Voting System**

#### Mock Election

In preparation for the 2022 Gubernatorial Election cycle, SBE, in conjunction with the local boards are conducting a mock election. Although many tasks and activities associated with federal and state elections will be completed, the mock election will primarily focus on assessing the functionality of the new Agency Election Management System (AEMS) and the logic and accuracy (L&A) testing for the voting equipment. The local boards have the materials for L&A testing and are expected to complete the testing phase by the early portion of November. We will use the results from the L&A testing to complete additional testing of AEMS and the activities associated with certifying elections. The mock election is expected to be completed by the middle of December 2021.

#### Electronic Pollbook Printers

Mr. Satterfield reported that at the Board of Public Works' meeting held on September 15, 2021, SBE's procurement of new electronic pollbooks printers was approved. This solicitation allows the purchase of 7,660 Seiko MP-A40 printers to be used with both the current and new electronic

pollbook solution. This specific printer has already been deployed in several local boards, and this procurement replaces the existing printers for other local boards. To date, 700 printers have already been delivered to SBE's warehouse with the remaining balance due to arrive between December 2021 and April 2022. SBE will be working with the local boards to arrange delivery of the new printers along with the pickup of the current printers.

### **Project Management Office (PMO)**

#### New Electronic Pollbook Solution and 2022 Elections

Mr. Ross reported that after a competitive procurement, DemTech, a Virginia-based company, was chosen to implement Maryland's new pollbook solution.

SBE will implement the new pollbook solution for the 2024 elections instead of the 2022 elections. The evaluation committee recommended this schedule change, including its technical advisors and the majority of the offerors. The change was due to all of the vendors' solutions requiring significant development to meet Maryland's unique, centralized election administration structure, same-day registration requirements, and identified nonvisual access issues. This decision:

- Reduces the amount of risk for the 2022 Primary and General Elections;
- Allows the selected vendor time to develop and implement Maryland's requirements fully;
- Gives State and local election officials time to thoroughly test and perform a comprehensive, statewide mock election before the solution's use in an election; and
- Allows State and local election officials to devote more resources to the implementation of the results from the current and upcoming redistricting and reapportionment efforts;

The change to a 2024 implementation means that SBE will use the current electronic pollbooks for the 2022 elections. State and local election officials will perform the normal election preparation activities (e.g., charging the units according to the established schedule, performing maintenance and repair, and assessing battery health) for the current pollbooks. SBE will obtain licensing to use the current pollbooks in the 2022 election cycle.

#### Other

The PMO also completed the procurement submissions for the additional number of equipment items that include voting booths, ADA tables, ballot and precinct carts, and privacy sleeves that will be needed for the 2022 elections. The PMO will be working with other SBE individuals for the planning and preparation related to Personal Protective Equipment (PPE) items for the 2022 election cycle.

### **Information Security**

Mr. Treichel reported that we continue to implement a risk-based approach to improve on our information security mission to detect and defend against a changing cyber threat landscape. As we prepare for the 2022 election cycle, these efforts include several initiatives:

1. Updating security policies to define requirements specific to SBE operations
2. Detailing technical standards to help to secure IT systems
3. Response training and managed security services that enhance monitoring, alerting and incident response to help protect and defend SBE systems and the election process
4. Auditing and assessment to assure compliance with policies and best practices

We have also increased penetration testing, vulnerability detection, and auditing to continuously improve SBE systems and IT operations and have increased the use of tabletop exercises to train and test operational readiness and response. We continue our efforts in social media defense and vendor supply-chain security. Our partnerships with CISA, DHS, FBI, local boards, and other agencies provide a wide range of resources and services to support the cybersecurity mission.

## ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Trento gave the following updates:

1. *Fusaro v. Davitt et al.*, No. 20-1879 (U.S.C.A. for the 4th Cir.). No change from the last update. Plaintiff Dennis Fusaro brought a complaint in federal court alleging that Maryland violates the First and Fourteenth Amendments by limiting access to the voter list to Maryland voters and only for purposes related to the electoral process. On September 4, 2018, the State defendants' motion to dismiss the complaint was granted, and the plaintiff appealed. On July 12, 2019, the Fourth Circuit vacated the dismissal order, and remanded the case for further proceedings. The parties then conducted discovery and briefed dispositive summary judgment motions. On July 14, 2020, the Court awarded Summary Judgment to the defendants on the issue of whether the "electoral process" requirement was unconstitutionally vague and declined to reach the issue of whether Maryland's registered voter requirement violates the First Amendment. Plaintiff appealed to the United States Court of Appeals for the Fourth Circuit. The appeal is fully briefed, and oral argument took place on September 23, 2021. The Court has not yet issued its ruling.
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.). On August 1, 2019, the National Federation of the Blind ("NFB"), NFB's Maryland chapter, and three individual plaintiffs filed a lawsuit against the State Administrator and the individual members of the State Board of Elections alleging that SBE's BMD policy has, in practice, violated the rights of voters with disabilities "to an equal opportunity vote in person by a secret ballot," in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Plaintiffs seek an order requiring the State Board "in all future elections to offer BMDs to every in-person voter as the default method of voting, with paper ballots offered only to those voters who affirmatively opt out of using the BMD or in cases where there are long lines of people waiting to vote." On September 3, 2019, defendants filed a motion to dismiss the complaint, and on September 20, 2019, plaintiffs filed a motion for a preliminary injunction, seeking relief in time for the November 2020 election. On February 10, 2020, the court denied the defendants' motion to dismiss, and denied the plaintiffs' motion for preliminary injunction, and the parties proceeded to discovery. On October 6, 2020, the parties filed a joint motion to extend the discovery deadline to December 9, 2020, which was granted by the Court. 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. On or around July 26, 2021, the parties finalized and executed a settlement agreement resolving the claims in the case, including any claim for attorneys' fees, contingent on approval by the Board of Public Works. On September 1, 2021, the Board of Public Works approved the settlement, and on September 24, 2021, the parties filed a joint stipulation dismissing the case.
3. *Chong Su Yi v. Hogan*, Nos. 464985, 466396, 480720, 480721, 480722, 480723 (Cir. Ct. Montgomery Cty.). No change from the last update. On September 8, 2019, plaintiff Chong Su Yi filed two complaints in the Circuit Court for Montgomery County challenging the results of Maryland's 2018 elections, and naming Governor Larry Hogan as defendant (Nos. 464985, 466396). Specifically, Mr. Yi argued that the results of that election are invalid because of the use of religious facilities as polling places, that the State's use of "scanners" to tabulate ballots is unconstitutional and/or not permitted by federal law, and that the State's identification of candidates' party affiliations on the general election ballot

is not permitted by State law. Mr. Yi amended his complaints, and in January 2019 both of his amended complaints were dismissed by the Circuit Court. On January 21, 2020, Mr. Yi appealed from the dismissal in No. 466396. (Mr. Yi had also previously filed interlocutory appeals from non-final orders, but these were dismissed by the Court of Special Appeals.) On November 4, 2020, the Court of Special Appeals dismissed Mr. Yi's appeal for failure to file a civil information report, but on November 30, 2020 granted Mr. Yi's motion for reconsideration and reinstated the appeal. After briefing, the Court of Special Appeals indicated that it would be ruling on the case without oral argument. On October 5, 2021, the Court issued a *per curiam* opinion affirming the dismissal of the case.

4. *WinRed, Inc. v. Ellison, et al.*, No. 21-cv-1575 (D. Minn.). On July 7, 2021, WinRed, Inc. – a federal PAC created to assist Republican Party candidates – filed a lawsuit against the Attorneys General of Connecticut, New York, Maryland, and Minnesota (the “State AGs”), seeking a declaration that State consumer protection statutes and regulations are preempted by federal law, to the extent that these State laws are being enforced to regulate the use of pre-checked recurring contribution boxes for solicitations for federal offices. WinRed had received letters from the defendants requesting information and documents regarding its use of pre-checked boxes in that context. (It is now public that ActBlue – the PAC formed to assist Democratic Party candidates – has received a similar request from the same State AGs but has not joined this lawsuit.) On July 16, 2021, each of the State AGs served formal subpoenas seeking the information and documents previously requested by letter from WinRed.

On July 27, 2021, WinRed filed a motion for preliminary injunction against enforcement of the subpoenas served by the State AGs. On July 29, 2021, the State AGs moved to dismiss the complaint. Both motions are fully briefed, and oral argument has been scheduled for November 2, 2021.

5. *Connors v. State of Maryland, et al.*, No. C-02-CV-21-001282 (Cir. Ct. A.A. Cnty.). On September 23, 2021, the Plaintiff filed a lawsuit challenging the SBE's disclosure of personalized voter information on lists of registered voters without obtaining voters' consent. She alleges that SBE's practices of (i) disclosing information beyond just the names of voters on the voter list, (ii) disclosing the voter list to non-Maryland registered voters, (iii) transmitting the voter list to individuals or organizations who do not swear the oath that the list will only be used for electoral purposes, (iv) failing to ensure that the purpose for which the list is intended to be used by the applicant comports with that requirement, and (v) allowing only some voters to participate in the voter confidentiality program, violates various State and federal laws and constitutional provisions. The plaintiff is seeking, among other things, damages in the amount of \$400,000 for each instance her voter information was disclosed on a voter list transmitted to an applicant, and seeks injunctive relief in the form of an order forbidding SBE from disclosing voter information without the affirmative consent of the voter and requiring SBE to issue new voter ID numbers to every Maryland registered voter. The State of Maryland, the State Administrator, and the Governor are named as defendants in the case. The Defendants' response to the Complaint is due November 8, 2021.

In response to a question from Ms. Woodward, Mr. Trento stated that the Plaintiff does not have counsel.

**APPROVAL OF PROPOSED REGULATIONS: COMAR 33.01.01.01 – GENERAL PROVISIONS – DEFINITIONS, 33.08.04.04 – CANVASSING – CENTRAL COUNT PROCEDURES, 33.17.02.02 – EARLY VOTING – EARLY VOTING CENTERS, AND 33.11.01.04 – ABSENTEE BALLOTS – BALLOT DROP BOXES**

Ms. Hartman presented for adoption two proposed amendments to COMAR 33.11.01.01B. The proposed changes are:

1. 33.01.01.01B(22)(b) (General Provisions – Definitions): The proposed change corrects an error which should reference Subsection (22) but incorrectly references Subsection (19). In September 2011, the Board approved amendments that added defined terms, which added subsections to Section (B) of this regulation. At that time, only the subsections were renumbered, and the reference in 33.01.01.01B(22)(b) was inadvertently not updated.
2. 33.01.01.01B(26)(a)(ix) (General Provisions – Definitions): This proposed change updates the acceptable documents to prove proof of residency, specifically for students at independent Maryland institutions of higher education who reside on that institution's campus. Students who attend a public college or university (as defined by Education Article, § 10-101(m), Annotated Code of Maryland) are currently able to show documentation from their school which counts as "another current government document" (an allowed form of proof of residency under COMAR 33.01.01.01B(26)(a)(viii)), while students from an independent college or university are not currently permitted to show such documentation.

There was no discussion or questions regarding the proposed amendments. Mr. Williams made a motion to approve the proposed amendments as presented by Ms. Hartman, specifically the changes to COMAR 33.01.01.01B(22)(b) and 33.01.01.01B(26)(a)(ix). Ms. Woodward seconded the motion. It passed unanimously.

Ms. Charlson presented for adoption changes to COMAR 33.04.04, 33.17.02.02, and 33.11.01.04. The proposed changes are:

3. 33.08.04.04 (Canvassing – Central Count Procedures): This new regulation allows a local board to instruct a canvassing team to darken an oval that is too light to be read by a scanner and defines the process for darkening the lightly filled in oval. This formalizes an established process and would only occur during a public canvass.

Mr. Voelp expressed his concern regarding allowing a canvassing team to decide voter intent and that he would prefer the decision go to the Board of Canvassers to decide, or that the ballot be duplicated. Ms. Charlson clarified that the proposed regulations require that the election director or his or her designee must approve darkening of an oval. Mr. Funn stated that he preferred to keep the original ballot as is, in the event of a challenge. Ms. Charlson clarified that once a ballot is scanned, the time for a challenge to that ballot has passed. The correct time for a challenge is when a ballot is being reviewed. She further elaborated that this process was suggested to avoid duplication, which is very time consuming.

In response to a question from Ms. Woodward regarding what the current process is, Ms. Charlson stated that some local boards will scan the ballot as is and let the scanner determine what ovals can be read. Other local boards are already darkening ovals.

Due to the Board members' concerns, Ms. Charlson suggested that the proposed regulations be tabled for a future meeting. Mr. Funn made a motion to table the proposed amendments as presented by Ms. Charlson, specifically the amendments to COMAR 33.08.04.04. Ms. Woodward seconded the motion. It passed unanimously.

4. 33.17.02.02 (Early Voting – Early Voting Centers)

- a. §A – Considerations for Early Voting Centers incorporates the content of [HB 745](#) of the 2021 Legislative Session (Chapter 43), which lists factors for the local boards to consider when determining where to locate early voting centers. The first five considerations are from HB 745, and the other two considerations – (6) and (7) – are currently in COMAR 33.17.02.02B.

The language in §A(2)(a) – (b) is currently Regulation .02B(4) with two substantive changes. These subsections were written when no county had two early voting centers and the most centers in a county was five. Since there are now counties with two early voting centers and counties with more than five centers, we need to define the population requirement for counties with two early voting centers and those with more than five. With these proposed changes, a county with: (1) two early voting centers will need to have 50% of the registered voters in the county living within 10 miles of one proposed early voting center; and (2) more than five early voting centers will need to have 80 percent of the registered voters live within 5 miles of one of the early voting centers.

- b. The text in new §B – Requirements for Early Voting Centers is currently §B(1) – (3), (5), (8), and (10) (Contents of the Form, which will be a new §D). By creating this new section, they become requirements for the early voting center locations, rather than requirements for the form.
- c. By creating a new §A and §B, we can remove the same language from the “Contents of the Form” section (currently §B and new §D). The opening sentence in the new §D is amended to reflect that the form will include questions about how the proposed early voting center meets the considerations and requirements defined in this regulation.

The other changes renumber the remainder of the regulation.

In response to a question from Ms. Woodward regarding the weight of each of the considerations for early voting centers, Ms. Charlson stated that the first five considerations are required from legislation and the fifth and sixth considerations have been in existence since the beginning of early voting. She clarified that the considerations listed in legislation were not prioritized. Mr. Voelp stated that often boards want to include all considerations, but sometimes there just isn't a building that meets all of them.

In response to a question from Mr. Williams regarding the potential early voting centers for 2022, Ms. Charlson stated that there may be approximately 10-12 new early voting centers due to legislation, as well as a handful of new facilities that may need approval for various reasons.

Mr. Funn made a motion to approve the proposed amendments as presented by Ms. Charlson, specifically the changes to COMAR 33.17.02.02. Ms. Woodward seconded the motion. It passed unanimously.

5. 33.11.01.04 (Absentee Ballots – Ballot Drop Boxes): This new text incorporates the requirements of [SB 683](#) (Chapter 56) and [HB 1048](#) (Chapter 514) of the 2021 Legislative Session. These bills list factors for the local boards to consider when determining where to locate ballot drop boxes and security requirements, and the requirements are included in §A and §B. The new text in §C defines the process for approving proposed locations for ballot drop boxes. It mirrors the process established for early voting centers and includes the requirements of SB 683 and HB 1048.

In response to a question from Mr. Funn, Ms. Charlson stated that in regulations we use the term absentee as opposed to mail-in because that is the term used in the Maryland Constitution.

Mr. Williams made a motion to approve the proposed amendment as presented by Ms. Charlson, specifically the changes to COMAR 33.11.01.04. Mr. Miller seconded the motion. It passed unanimously.

**APPROVAL OF FINAL REGULATIONS- COMAR 33.05.01.02 (VOTER REGISTRATION – DEFINITIONS; GENERAL PROVISIONS), 33.11.01.01 (ABSENTEE BALLOTS - DEFINITIONS; GENERAL PROVISIONS), 33.11.02.03 (ABSENTEE BALLOT- INFORMAL, WRITTEN REQUEST), 33.11.02.05 (ABSENTEE BALLOT- PROCESSING APPLICATIONS), 33.11.03.06C (ABSENTEE BALLOT- RETURN OF BALLOT), 33.11.05.07 (ABSENTEE BALLOTS – REJECTING FEDERAL WRITE-IN BALLOTS), AND 33.17.04.03 (EARLY VOTING – EQUIPMENT AND MATERIALS)**

Ms. Charlson presented proposed amendments to COMAR 33.05.01.02, 33.11.01.01, and 33.11.02.05, 33.11.03.06C, 33.11.05.07, and 33.17.04.03 for final adoption. These proposed regulations were approved by the Board at its May 27 and June 22, 2021 meetings and published in the August 13, 2021, issue of the *Maryland Register* (Vol. 48, Issue 17). The public comment period closed on September 13, 2021. Ms. Charlson stated that no public comments were received.

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

**APPROVAL OF CONFIDENTIALITY FORM**

Mr. DeMarinis presented an updated version of the Confidentiality Request Form, the purpose of which, he explained, is for voters to request that their residential addresses, email addresses, and phone numbers be kept off voter registration lists, and candidate filings and political committee lists as appropriate. The form is divided into the five categories of eligible voters, one of which the voter must select. Mr. DeMarinis explained that the form has been streamlined to correct questions that previously were frequently confusing to voters.

There was no discussion on the approval of the proposed Confidentiality Request Form. Ms. Woodward made a motion to approve the form as presented by Mr. DeMarinis, and Mr. Miller seconded the motion. The motion passed unanimously.

## **APPROVAL OF ADMINISTRATIVE CLOSURES**

Mr. DeMarinis presented a request to administratively close two campaign committees. Pursuant to §13-313 of the Election Law Article, the State Board has the authority to administratively close a political committee upon determination that good cause exists and when other criteria are met.

The committees Mr. DeMarinis requested to administratively close were:

1. Take Back Maryland PAC
2. Thames, Jeffery Friends of

Mr. DeMarinis stated that the Office of the State Prosecutor (OSP) has taken the appropriate steps to bring both committees into compliance and either citations have not been able to be served or the responsible parties have moved out of state. Due to these circumstances, the OSP has recommended closure of these accounts.

In response to a question from Mr. Voelp, Mr. DeMarinis stated that generally OSP must know the disposition of any remaining funds in an account before recommending closure. In the case of the accounts presented today, the OSP believes the accounts do not have any remaining balance.

In response to second question from Mr. Voelp, Mr. DeMarinis stated that once an account is administratively closed, there is not anything SBE can do to prevent the responsible party from filing again. He clarified that SBE can only collect fees for up to five years, but that every effort is made to collect fees within the legal timeframe, and administrative closure is generally only requested after the five years have expired.

There was no further discussion on the request. Ms. Woodward made a motion to approve the administrative closure of the two accounts as presented by Mr. DeMarinis, and Mr. Funn seconded the motion. The motion passed unanimously.

## **APPROVAL OF TITLE 14 LATE FEE WAIVERS**

Mr. DeMarinis presented a request from Vistra Energy Corp. to waive late fees incurred by the committee. One business was denied waivers of late fees and was presented to the board for informational purposes.

Mr. DeMarinis explained that Vistra Energy Corp. requested to close a duplicate account, and that all filings were properly recorded under the parent account.

Mr. Miller made a motion to approve the Title 14 late fee waiver as presented, and Ms. Woodward seconded the motion. The motion passed unanimously.

## **OLD BUSINESS**

There was no old business.

## **NEW BUSINESS**

### MAEO Proposal- Election Director and Deputy Director Grade Adjustment

Mr. Garreis stated that the proposal presented to the Board is the culmination of a six-year MAEO project, with the grade adjustment of local board staff having taken place in the prior term of the Board. The election series job classifications were thoroughly reviewed and overhauled with input from the Maryland Association of Election Officials (MAEO) Personnel Committee, Department of Budget and Management (DBM), and SBE's Human Resources Division.

As part of this process, the Director and Deputy Director job specifications and minimum qualifications were updated to include a bachelor's degree, modern technology requirements, additional processes and projects required to successfully conduct an election, and changes to procedures and regulations mandated by election law.

Additionally, the time commitment for the positions have increased, such as additional early voting hours and more requirements to successfully administer an election. In an emergency, Mr. Garreis stated that election directors and deputy directors must remain on-duty as elections are classified as critical infrastructure.

As part of this proposal, Mr. Garreis presented two recommendations on behalf of MAEO. They are:

1. Adjusting the salary bands for Directors and Deputy Directors by two grades per band.
2. Approving a 2-grade adjustment for current Election Directors and Election Deputy Directors.

Mr. Garreis explained that the recommendations are based on:

- Higher job qualifications and requirements;
- New job duties and projects that Directors and Deputy Directors must manage;
- Increasingly sophisticated and multifaceted nature of modern Election Management; and
- Nearly 10 years since previous salary adjustment.

Mr. Garreis stated that this request is in line with DBM's recommended 12% salary adjustment for reclassifications in the same classification series and aligns with the increase approved for Board of Elections staff when being reclassified by two grades. Mr. Garreis presented the proposed salary bands for the positions of Election Director and Deputy Director I, II, and III, which are based on the number of registered voters in each local jurisdiction. He explained that due to the adjustment of local board staff grade two years ago, there are currently staff with higher grade classifications than the Deputy Directors who are their immediate supervisors, and that completing the grade adjustment is necessary to resolve this issue. Mr. Garreis then proposed a two-grade adjustment for each Director and Deputy Director, to be retroactive to July 1, 2021.

Mr. Garreis listed the reasons for the Board to support MAEO's proposals, including:

- The demands on election officials are at an all-time high, while the pay scale for election officials is lower than that of other agency leaders and department heads, which may lead to election leaders leaving their positions. He cited that following the 2020 elections, 25% of Election Directors in Maryland have retired.
- Competitive salaries are essential to retaining experienced election officials and attracting talented candidates to fill open positions.
- DBM was instrumental in developing the new Election Director and Election Deputy Director job classifications and approved the qualifications and grade match several years ago. The new job specifications and qualifications for Election Directors and Deputy Directors are active and have been used for hiring since April 2019.
- This request is budget neutral. All budget funding requests have already been included in the LBEs' approved FY22 budget.

- This request is the culmination of a project started in 2015 between the MAEO Personnel Committee, SBE's HR Division, and DBM to update election job descriptions and grades after nearly 15 years without any updates.

Ms. Woodward thanked MAEO and Mr. Garreis for the thorough presentation.

Mr. Voelp suggested that the Board continue the discussion on the MAEO proposal after the closed session.

### **DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

Mr. Funn disclosed a \$20 payment to Hoyer For Congress for a bull roast. There were no other contributions.

### **SCHEDULE NEXT MEETING**

The next meetings are scheduled for Thursday, December 16, 2021, at 2 p.m., and Thursday, January 20, 2022. Ms. Woodward stated that there is a chance she may not be available for either meeting. Mr. Voelp reiterated the importance of the other members to attend so that quorum will be reached.

### **CLOSED SESSION – PERSONNEL**

Mr. Voelp requested a motion to close the board meeting under General Provisions Article, §3-305(b) (1), which permits closing a meeting to discuss compensation of officials over whom the State Board has jurisdiction. Mr. Williams made a motion to convene in closed session under General Provisions Article, §3-305(b)(1), and Ms. Woodward seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions defined in (b)(1) of Section 3-305 of the Open Meetings Act to discuss compensation of officials over whom the State Board has jurisdiction. The closed session began at 3:50 pm. Mr. Voelp, Mr. Funn, Mr. Miller, Mr. Williams, and Ms. Woodward attended the closed meeting. In addition to the board members, Ms. Lamone, Ms. Charlson, Mr. Trento, Ms. Duncan, and Ms. Shermaine Malcom, Director of Human Resources, attended the closed meeting.

During the closed session, Ms. Malcolm presented a compensation request submitted by a local board of elections, and Ms. Lamone provided her recommendation. The request was a salary request for a candidate for a vacant position at a local board of elections. Mr. Funn made a motion to accept Ms. Lamone's recommendation for the salary request for a candidate for a vacant position, and Ms. Woodward seconded the motion. The motion passed unanimously.

The closed meeting adjourned at 4:16 pm.

The open meeting reopened at 4:25 pm.

### **NEW BUSINESS- Continued**

#### MAEO Proposal- Election Director and Deputy Director Grade Adjustment (Continued)

##### *Board Discussion*

In response to a request from Mr. Voelp, Mr. Garreis stated again that the specific requests from MAEO, which were 1) to adjust the salary band for Election Directors and Deputy Directors by two grades per band and 2) to adjust the grade for all current election directors and deputy directors by two grades. Ms. Lavoie reiterated that these requests are not new and have been in

the plans for the last five years. Mr. Garreis confirmed that the request for current Directors and Deputy Directors be retroactive to the beginning of the current fiscal year.

In response to a question from Mr. Williams, Ms. Lavoie gave background and history on how this proposal came to be. In response to a follow up question, Mr. Garreis stated that the proposed salary bands use the same voter registration breakdown to determine salary grades.

Prior to giving her recommendation, Ms. Lamone made a correction to the MAEO presentation clarifying that the salary increase that she approved and the State Board ratified for local board staff in 2019 was a 6% increase, not a 12% increase. Ms. Lamone stated that her recommendation for the Election Directors and Deputy Directors is similar- a 6% increase, or a one grade increase, for both requests effective January 1, 2022.

In response to a question from Mr. Williams regarding her rationale, Ms. Lamone explained that her recommendation reflects the big picture and takes into account staff morale at SBE. SBE salaries are controlled by DBM, and a 12% increase at the local boards would mean several staff at the local level that make a considerably more than SBE staff.

In response to a question from Ms. Woodward regarding the authority of the Board to make its own recommendation, Mr. Trento stated that the Board can reject the Administrator's recommendation, but further research is needed to determine if the Board can make its own salary recommendation.

In response to a follow up question from Ms. Woodward regarding the Administrator's recommendation of a January 1, 2022 effective date, Ms. Lamone stated that this was consistent with the prior adjustment for local board staff.

Mr. Voelp explained that the Board had three options to proceed- 1) Vote to accept the Administrator's recommendation; 2) Vote to table the proposal; or 3) Vote to deny and ask the Administrator to reconsider her recommendation. For multiple reasons, the Board members agreed that tabling the proposal was the best way to proceed.

Ms. Woodward made a motion to table the MAEO proposal for Election Director and Deputy Director grade adjustment and the State Administrator's recommendation until the December meeting. Mr. Williams seconded the motion. The motion passed unanimously.

## **ADJOURNMENT**

Ms. Woodward made a motion to adjourn the meeting. Mr. Williams seconded the motion. The motion passed unanimously. The open meeting adjourned at 5:03 pm.