

Attendees: Robert L. Walker, Chairman
Andrew Jezic, Member
David McManus, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Sandy Brantley, Assistant Attorney General
Jared DeMarinis, Candidacy and Campaign Finance Director
Michael Kortum, Chief Information Officer
Nikki Trella, Election Reform Director
Mary Wagner, Voter Registration Director
Paul Aumayr, Voting System Director
Rick Urps, Election Reform Division
Janey Hegarty, IT Division
Matt Libber, Project Management Office
Kathy McClellan, Project Management Office

Also Present: Mary Kiraly, Montgomery County Board of Elections
Betty Nordaas, Howard County Board of Elections
Carol Hart, Howard County
Holly Joseph, Save Our Votes
Stan Boyd, Save Our Votes

DECLARATION OF QUORUM PRESENT

Chairman Robert Walker called the meeting to order at 2:44 p.m.

APPROVAL OF THE APRIL 23RD BOARD MEETING MINUTES

The minutes of the April 23, 2009, board meeting were presented for approval. Mr. Walker made a motion to approve the minutes, and Mr. Jezic seconded the motion. The minutes were approved unanimously.

ADDITIONS TO THE AGENDA

Chairman Walker stated that there were no additions to the agenda.

ADMINISTRATOR'S REPORT

Ms. Lamone provided the Administrator's Report.

1. Announcements

Ms. Lamone welcomed Valerie O'Connor who began on May 13th as the new budget officer. Valerie comes to SBE from the Charles County Social Services office where she served as budget officer. Her State experience, strong organizational skills and professional and friendly demeanor have already made her a big asset to the office.

The last week in April, Stacey Johnson sat for the IT Project Management Professional (PMP) certification examination. Ms. Lamone congratulated Stacey on earning this nationally-recognized, IT industry credential that will contribute directly to her work here at SBE.

2. Meetings and Important Dates

HAVA State Plan Committee

At Ms. Lamone's request, Ms. Trella informed the Board that the HAVA State Plan Committee met on May 18, 2009, to discuss proposed changes to the State Plan. The U.S. Election Assistance Commission (EAC) has adopted a policy requiring a state to revise its State Plan if: (1) state legislation is enacted that makes a material change to how the state is meeting the requirements of HAVA; and (2) additional federal funds are available and the state's initial State Plan did not contemplate the full funding of HAVA. It was determined that the State Plan should be revised to address the new voting system and plan for full funding of HAVA. Accordingly, the Committee (comprised of the State Administrator, three election directors, and representatives from the Maryland Association of Counties, the National Federation of the Blind, and the

League of Women Voters) reconvened to consider the proposed changes. The changes primarily updated where SBE is currently in its elections improvement tasks and provided an update for future plans and activities. The Committee accepted the proposed plan and added a few recommendations of its own. The revised State Plan is part of the meeting materials for the Board's review. The State Plan will be submitted for publication in the *Maryland Register*. At the end of the public comment period, any comments will be reviewed and if necessary, updates to the State Plan will be made, and the State Plan will be submitted to the EAC for publication in the *Federal Register*.

U.S. Election Assistance Commission's Board of Advisors Meeting

Ms. Lamone reported that she will be attending the EAC's Board of Advisors meeting in Washington, D.C. from June 2 – 4, 2009, of which she is a member. Although the Board of Advisors will be updated on the EAC's various work and projects, the focus of the meeting is the proposed updates and improvements to the 2005 Voluntary Voting System Guidelines. Ms. Lamone noted that the proposed 2007 VVSG are thought to be too ambitious. Instead, drafters are considering incorporating the worthwhile improvements of the 2007 VVSG into the 2005 version. As a member of the Board of Advisors' Voting System Standards Committee, Ms. Lamone reported that she attended an all-day meeting on May 21, 2009, in Washington, D.C. to prepare for the full Board of Advisors' meeting. This Committee is expected to provide assistance and information to other members of the Board of Advisors on voting system related projects and documents.

Ms. Lamone also reported that the EAC hosted a virtual meeting room for the members of the Board of Advisors to provide comment on Phase I of the EAC's Election Operation Assessment project. Although primary purpose of the project was to assist with the development of future versions of the Voluntary Voting System Guidelines and testing protocols by the National Institute of Standards and Technology, the project appears to have transitioned into an elections operational assessment. Phase I documentation uses flowcharts and diagrams to demonstrate the variety of election preparation, election day, and post-election procedures used to conduct an election using a variety of different voting system technologies. In addition to individual board members' comments, the Voting System Standards Committee generally expressed its concern about the scope of the project and its expected use to assess the operations of current voting systems. Ms. Lamone noted that the project should remain focused on standards and reviews of future voting systems, not voting systems currently in use.

Maryland Association of Election Officials' Annual Meeting

Ms. Lamone reported that the Maryland Association of Election Officials' annual meeting is scheduled for June 7 – 9, 2009, at Rocky Gap Resort in Allegany, County. Ms. Lamone along with Ross Goldstein, Donna Duncan, Mary Wagner, and Nikki Trella will be attending the entire conference. Rick Urps also may be attending for one day. The theme of the meeting is "Protecting the Integrity of Elections" and there will be a lot of topics covering early voting.

Orphans' Court Judges' Conference

Ms. Lamone reported that on May 20, 2009, Jared DeMarinis spoke at the Maryland Association of Orphan's Court Judges Conference regarding campaign finance and candidacy issues. Over 60 judges attended the conference.

3. Election Management and Reform

Regulatory Review Process

Ms. Lamone reported that as part of the agency's regulatory review process, staff members have starting reviewing and are drafting proposed changes to the fourth (of five) set of COMAR subtitles. The subtitles include 33.06 (Petitions), 33.07 (Election Day Activities), and 33.08 (Canvassing). Several local boards of elections provided comments on these subtitles and public notice will be provided in the *Maryland Register* and on the Division of State Documents' website about the opportunity to review these subtitles. Evaluation reports (which identify whether amendments are needed and if so, a summary of the anticipated changes) are due to the Maryland General Assembly's Administrative, Executive, and Legislative Review Committee by July 1, 2009. Proposed changes to these regulations will be presented to the Board for adoption in fall 2009.

Election Judges' Manual Committee

Ms. Lamone reported that the committee is continuing its work and has reviewed and provided feedback on initial chapters of the election judges' manual. The committee anticipates meeting in the near future to continue its work.

4. **Voter Registration**

MDVOTERS

Ms. Lamone reported that the User Acceptance Testing for MDVOTERS software release 2.24 has been completed and the Mock Election began Friday, May 22nd. The Mock Election is expected to take approximately 2 weeks.

Ms. Lamone reported that on May 11-12, Stacey Johnson led a MAEO committee of voter registration experts in our annual review of the MDVOTERS issues reported to the Helpdesk. Issues reported to the Helpdesk by LBE staff include problems, needed enhancements, and other questions. During this two-day review, the committee reviewed in detail 376 issues. Of these, 234 were closed, 102 were given priority for future work and the rest were left open for further testing. We thank the following for their participation in this review: Guy Mickley and Walter Maddox from Howard; Abigail Goldman from Baltimore City; Tracey Dickerson from Charles; Paula Troxell from Carroll; Anthony Gutierrez from Wicomico; Steve Fratz from Garrett; Kim Jones from Dorchester; and, Noreen Schultz from Frederick county

Confirmation Mailing to MVA Clients

Ms. Lamone reported that the MVA and SBE collaborated on another mailing to those individuals who had a transaction at the MVA that is not reflected in the statewide voter registration database. This includes new registrations, name changes and address changes. Approximately 40,000 letters were mailed.

- As of Friday, May 22nd it appears we have about a 15.5% rate of return on new registrations and address and/or name changes not presently captured in MDVOTERS.
- Discussions continue with our software vendor to develop an automated approach to import into MDVOTERS the voter registration data that is collected by MVA's driver's license and titling systems.

Mr. Walker requested that staff look into an issue where a friend's six year old son received one of the above referenced mailings. Ms. Wagner responded that she would review this matter.

Petitions

Ms. Lamone reported that currently staff is aware know of one petition circulating. The petition is to place a question on the 2010 ballot relating to SB 277 and the use of speed cameras. The deadline for the sponsor to file the petition pages with the Secretary of State is Sunday, May 31st by 11:59 p.m. We have been in contact with the sponsors to make sure they know the procedures and have all the appropriate contact information. On Monday, June 1st SBE will numerically stamp each page and send out to the LBEs the petition pages for verification. Under Election law, the verification must be completed within 20 days.

A petition refresher "Go-To" meeting took place on Wednesday May 27th and Thursday, May 28th. This meeting not only covered the functionality of the petition portion of the MDVOTERS software, but business processes as well. In the case Doe vs. Montgomery County Board of Elections, the Court of Appeals stated that the Election Law §6-203 (1) "sign the individual's name as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names" is very explicit, and any variance is unacceptable. In the past it has been our practice to err on the side of the petition signer. If an election official could identify the voter, and all other criteria were correct, the signature would be accepted.

5. **Candidacy and Campaign Finance**

Ms. Lamone reported that on May 8, 2009, the Montgomery Pre-General campaign finance report was due for participating political committees. The transaction period cover from April 6 to May 3, 2009.

6. **Voting Systems**

Procurement of New System

Ms. Lamone reported that House Bill 893 (Chapter 428 of 2009), which the Governor signed on May 7th, provides alternative accessibility standards to be used "if, at the time of the procurement of a voting system, there is not a commercially available system that satisfies all the requirements" of § 9-102 of the Election Law Article of the *Annotated Code of Maryland*. If this contingency is met, House Bill 893 directs SBE to implement an optical scan voting system but authorizes the agency to forgo procuring ballot marking devices and instead deploy the existing touchscreen voting units to provide access for voters with disabilities. Mr. Walker asked whether the touchscreen voting units would only be available to voters with disabilities. Ms. Lamone responded that the touchscreen would be able to all voters.

Staff, in consultation with the Office of the Attorney General, concluded that there is not a commercially available system that satisfies all of the requirements of § 9-102. Accordingly, ballot marking devices will not be procured and deployed at this time. Instead, the touchscreen voting units will be used to provide access to voters with disabilities. Due to this change, staff determined that it was in the best interest of the State to cancel the RFP and reissue it. Since ballot marking devices are no longer a requirement, SBE determined that additional vendors can bid on the contract – which in turn would create more competition and in turn a more favorable price for the State. Copies of the commercial availability analysis and cancellation determination are available in your folders and online. Ms. Lamone also noted that two solicitations will be issued: one for the optical scan equipment; and one for the services necessary to implement the new ‘hybrid’ voting system. Staff anticipates having the new solicitations back out by mid-June.

Electronic Pollbooks

Ms. Lamone reported that staff performed data preparation and log file processing for the Montgomery County student board member election on April 29, plus 9 municipal and special elections in May. There were no significant problems experienced with the electronic pollbooks. Turnout was generally light, ranging from 3.3% in the Manchester (Carroll County) town election, up to 23.7% in Easton. As usual, turnout for the Montgomery student election was excellent, with several middle schools exceeding 95% turnout.

7. Early Voting

LBE Communication

Ms. Lamone reported that, in an attempt to communicate information about early voting with the local boards of elections, we have started including information about early voting in the County Bulletin and added to the Online Library the ability for the local boards of elections to post and review previously asked and answered questions about early voting. To date, several counties have posted questions, and all have been answered. We hope that these efforts will result in all local boards having the same information about early voting and will reduce the amount of duplicative information being distributed. Ms. Lamone also noted that Anthony Gutierrez, Election Director for Wicomico County attends SBE’s early voting project planning meetings in order to represent MAEO and help with communication issues.

Early Voting

Ms. Lamone reported that work continues on defining the functional requirements for the ExpressPoll and EPIC server software necessary to implement early voting, and testing the current applications to determine additional program modifications that may be required. SBE is geo-coding the voter registration database and plotting the results on county maps to assist the LBE’s with early voting site selection. This effort is scheduled for completion by the end of May.

8. Information Technology

Ms. Lamone highlighted a number of the items addressed by the IT division over the past month.

- Completed numerous MDVOTERS firmware upgrades
- Installed battery back-up to data storage devices at the data center tape drive unit (COOP)
- Updated several SBE software/application licenses and support
- Provided more changes to the data tables for the University of Maryland
- Provided comparison tables for MVA voter look-ups
- Provided Saber design support for Data Center Refresh plan (MDVOTERS)
- Deployed Oracle critical patches (April 09)
- Created additional Campaign Finance forms and reports
- Rebuilt 1 desktop computer
- Completed Early Voting Q & A updates to the SBE web sites
- SBE visited a total of 4 LBEs in the last month providing assists that included:
- Provided service to nine campaign committees
- Validated six LBE equipment inventories
- Uploaded 1042 items to inventory
- Processed 102 pieces of excess IT equipment and removed them from SBE warehouse
- Developed alternate network connections with NwMD for three LBEs
- Completed troubleshooting and repair of network connections for 6 LBEs.
- With NwMD conducted systems and circuit monitoring for data usage (2 LBEs)
- Processed 3 employee background checks and 2 contractor clearances
- Conducted security log audit
- Conducted MDVOTERS user access audit
- Updated 28 MDVOTERS user access accounts

Mr. Jezic asked where the new Montgomery County board office was going to be located. Ms. Lamone responded that it would be in Gaithersburg.

ASSISTANT ATTORNEY GENERAL’S REPORT

Assistant Attorney General Sandy Brantley reported that on May 1 she advised staff about the procurement of the new voting system. Specifically, she advised that SBE had a sufficient basis to conclude that the contingency outlined in emergency legislation, House Bill 893, was met. The legislation, which took effect on May 7, outlined alternative standards for the new voting system to be used only if “at the time of procurement of a voting system, there is not a commercially available system that satisfies all of the requirements” set out in the 2007 law mandating a voter verifiable paper record voting system by 2010. Because SBE had validly concluded that the contingency was met, she further advised that it was within SBE’s legal authority to provide voters in each polling place in 2010 with at least one DRE touchscreen unit that is accessible to disabled voters, in addition to optical scan units. Finally, she advised that SBE could validly cancel Solicitation No. D38B920006, which sought proposals for a voting system comprised of optical scan devices and electronic ballot marking devices, and issue a new RFP for optical scan devices only.

Ms. Brantley also reported that on May 18, she reviewed proposed regulatory changes to COMAR, Title 33, Subtitles 13, 15 and 16, and approved them for constitutionality and legal sufficiency.

REGULATIONS

Ms. Trella referenced a memorandum dated May 18, 2009, explaining the proposed changes Subtitles 13, 15, and 16 of the Code of Maryland Regulations. Mr. Jezic inquired as to whether an anonymous contribution under proposed Regulation 33.12.02B(2)(b) must be returned to the State Treasurer’s Office. Mr. DeMarinis responded that the contribution would have to be returned to the State Treasurer’s Office unless the contribution falls under the gambling exception in § 13-240 of the Election Law Article. It was the consensus of the board members, staff, and counsel that the proposed language is sufficiently clear. Mr. Jezic asked whether contributors should be permitted to provide a work address for contributions. Mr. DeMarinis explained that there is a need to be able to aggregate donations from an individual and the address provided by the contributor is used to do this. Mr. DeMarinis agreed to draft alternate language for Regulation 33.12.02A(4) to permit a contributor to provide either a residential address or a work address.

There was a motion to adopt the proposed changes to Subtitle 13 contingent on Board approval on alternate language for Regulation 33.12.02A(4) and the proposed changes to Subtitles 15 and 16, and the motion was seconded. The motion passed unanimously.

WAIVER OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented to the Board the following committees that requested a waiver of late fees:

1. Citizens For Joseph Sanchez A5237
2. Gregory Holmes in 2006 A4589
3. Prosperity 2002 Slate A3738
4. Citizens For Julian Jones A4944
5. Friends Of Gary Thomas A496
6. Bob Ehrlich For Maryland Committee A777
7. Citizens For Paul Muldowney A4491
8. Committee For Gerron Levi A4520
9. Proficient Alternative Community For James A. Wildoner A6379
10. Citizens For Sid Saab A4349
11. Friends Of Reuben Collins A4470
12. Committee To Elect Michael Eugene Johnson, City Council 9th District A6582
13. Committee To Elect Kenneth N. Oliver A2340
14. Wicomico County Democratic Central Committee A139

Ms. Mack made a motion to accept the Administrator’s recommendations to waive campaign finance late fees. The motion was seconded by Mr. McManus and was approved unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

SCHEDULE FOR THE NEXT MEETING

A future meeting was not scheduled.

ADJOURNMENT

Ms. Walker adjourned the meeting at 3:41 P.M.