

State of Maryland 

State Board of Elections Meeting – October 22, 2009

Attendees: Robert L. Walker, Chairman
David McManus, Member
Rachel T. McGuckian, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeff Darsie, Assistant Attorney General
Mary Wagner, Voter Registration Director
Donna Duncan, Election Management Director
Paul Aumayr, Voting System Director
Nikki Trella, Election Reform Director
Jared DeMarinis, Candidacy and Campaign Finance Director
John Clark, Voter Registration System Project Manager
Stacey Johnson, Voter Registration System Deputy Project Manager
Keith Ross, Project Management Office
Matt Libber, Project Management Office
Kathy McClellan, Project Management Office
Michael Kortum, CIO
Valerie O'Connor, Budget Director

Also Present: Allison Murphy, Caroline County Board of Elections
Anthony Gutierrez, Election Director, Wicomico County
Jerrold Garson, Chairman, Montgomery County Board of Elections
Mary Kiraly, Member, Montgomery County Board of Elections

Holly Joseph, Save Our Votes
Stan Boyd, Save Our Votes
Barbara Sanders, League of Women Voters Maryland
Gilberto A. Zelaya, Montgomery County Board of Elections
Wayne Burton, Wicomico County Board of Elections
Debra E. Hickman, Wicomico County Board of Elections
Sara Harris, Montgomery County Board of Elections
Joanne Barthman, Wicomico County Board of Elections
Walter Maddox, Howard County Board of Elections

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:42 p.m.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the September 24, 2009, board meeting were presented for approval. Mr. McManus made a motion to approve the minutes, and Ms. McGuckian seconded the motion. The motion to approve the minutes was approved unanimously.

Chairman Walker then read the following summary of the September 24th closed meeting:

On September 24, 2009, at 3:45 p.m., the members of the State Board of Elections met in closed session to be briefed by staff and counsel on certain legal and procedural issues regarding the procurement of a new voting system and services, and SBE's budget submission to the Department of Budget and Management. All five members of the Board present at the September 24th public meeting voted to have a closed session under the authority provided in sections 10-503(c) and 10-508(a)(14) of the State Government Article of the Annotated Code of Maryland. In addition to the board members, Ms. Lamone, Mr. Goldstein, Ms. O'Connor, and Assistant Attorney General Jeffrey Darsie were present. No actions were taken.

Mr. McManus made a motion to amend the September minutes to include the close meeting summary, and Ms. McGuckian seconded the motion. The motion to amend the minutes was approved unanimously.

ADMINISTRATOR'S REPORT

1. Meetings and Important Dates

Election Directors' Meeting

Ms. Lamone reported that an election directors' meeting was held on Tuesday, October 20th. A summary of the meeting was provided in the meeting materials folder.

2. Election Reform & Management

Regulations Update

Ms. Lamone reported that, in addition to the regulations on the meeting agenda, previously adopted regulations were at various stages of the adoption process. The regulations adopted as final at the September board meeting were published in the October 9, 2009, edition of the *Maryland Register* and were effective as of October 19, 2009. The regulations made changes to Subtitles 13 (Campaign Financing), 15 (Precincts, Polling Places, and Directories), and 16 (Provisional Voting). Notice to the local boards was provided in the October 10th edition of the County Bulletin.

The public comment period for the new regulations relating to the site selection process for early voting closed on October 13, 2009, and no public comments were received. Since this new regulation cannot be adopted as final until after October 27, 2009, it will be presented for final adoption at the next board meeting. The anticipated effective date for this regulation is December 28, 2009.

The agency's review of regulations under the Regulatory Review and Evaluation Act is nearing completion. Evaluation reports for 33.05 (Voter Registration) and 33.11 (Absentee Voting) – the final two subtitles – were submitted to the General Assembly's Administrative, Executive, and Legislative Review Committee, and a notice of public inspection of the evaluation reports will be published in the October 23, 2009, edition of the *Maryland Register*. Proposed changes to these subtitles will be presented at the January board meeting.

Federal Legislation

Ms. Lamone reported that Congress continues to hold hearings and consider election-related legislation. S. 1415 – Military and Overseas Voter Empowerment Act introduced by Senator Schumer has been amended into S. 1390 – National Defense Authorization Act for FY2010. Since the Senate and House of Representatives passed two different versions of S. 1390, the legislation was sent to conference committee. The conference committee in the House of Representatives passed the legislation with a few minor changes, and the Senate conference committee is expected to meet shortly.

The Subcommittee on Elections of the House Administration Committee is holding a hearing on October 21st on H.R. 1719 – Voter Registration Modernization Act of 2009 introduced by Congresswomen Lofgren. This legislation would require election officials to provide on-line voter registration and change of information, use of electronic mail to communicate certain information to certain voters, and authorize the use of Help America Vote Act funds to implement the requirements. While the general intent and timeframe of the legislation is reasonable, some of the provisions are problematic for election officials. Ms. Lamone noted that a summary provided of the most critical issues to counsel of the House Administration Committee was provided with the meeting materials folder. The specific issues of concern include the fact that there is no requirement that the online voter registration system be linked to motor vehicle databases and the elimination of National Voter Registration Act list maintenance procedures which will over inflate voter rolls which in turn will impact polling place planning and equipment allocation.

Election Official Preparedness and Professional Development Program

As previously reported, Rick Urps has been developing a certification program for election directors, deputy directors, and staff of the local boards. The program includes courses that will assist local board employees with preparing for an election as well as enhancing their professional development with courses such as project management and managing an election office. On September 29th, Keith Ross of the Project Management Office conducted a trial course of Project Management. Ms. Lamone, along with several SBE staff members and several representatives of the local boards, attended this trial course. The course was very well received and will be the first course offered in the program. This course and other courses will likely be presented at the combined SBE biennial/MAEO meeting in May 2010. Mr. Walker asked whether participants would have to complete a certain number of classes in order to achieve certification. Ms. Lamone responded that there were two tracks each with different set of class requirements to obtain certification. One track was for election directors and deputies and the other for staff.

Election Judges' Manual Committee

Ms. Lamone reported that the committee continues to work through the 2008 election judges' manual and update and improve it for the 2010 elections and has started identifying and working through issues related to early voting. This committee is doing yeoman's work that will continue through the winter with some of the material awaiting the selection of a voting system.

3. Voter Registration

Data Center Refresh

Ms. Lamone reported that the refresh of the data center is ongoing. The refresh is necessary to replace equipment originally purchased and installed in 2005. Currently, the new components (servers, firewalls, database and system software) are being prepared and tested by the Voter Registration Division team at the VROC data center in Annapolis. Once the testing is complete and the VROC is operational, new equipment will be transported and installed at the COOP data center in Cumberland. The expected date for the full operation of the new data centers is December 31st. There will be a required downtime when the system will not be available to users at all. However, this will occur between Christmas and New Year's so the impact will be minimal.

Software Release

Ms. Lamone reported that the mock election for MDVOTERS release 2.26 is currently being conducted. The expected completion of the mock election and the release being moved into production is October 25, 2009. Development of early voting software is ongoing.

MVA Mailings

Ms. Lamone reported that roughly 15,000 letters have been mailed from MVA to voters and applicants whose registration records either need to be updated or who believe they are currently registered but do not appear in MDVOTERS. The response has been overwhelming.

4. Candidacy and Campaign Finance

Candidate Filing

Ms. Lamone reported that, as of October 19, 2009, 47 candidates have officially filed for the 2010 Gubernatorial Election.

Audit of Campaign Finance Reports

Ms. Lamone reported that the Candidacy and Campaign Finance Division has finished its audit of the 2008 election-related campaign finance reports. 105 committees have received deficiency notices. During this review, the most common deficiencies were missing or incomplete address, incorrect entries for reimbursements, and a lack of explanation for expenditures. The committees have until November 13, 2009 to amend their campaign finance reports; otherwise, they will be charged late fees.

Training/Classes

Ms. Lamone reported that, on October 8, 2009, Jared DeMarinis spoke at the Farm Bureau candidate training forum on candidate filing and campaign finance requirements for the 2010 elections. It was attended by 30 people. In addition, 30 people have signed up for the Friday, October 23rd seminar at the SBE office on campaign finance regulations.

Enforcement Actions

Ms. Lamone reported that on September 29, 2009, SBE referred 40 committees for failure to file 2008 Pre-General and Post General Campaign Finance Reports. Additionally, SBE referred over 90 committees for failure to file the 2009 Annual Report. Prior to the referral, every officer has received at least 3 notices from SBE as a reminder to file the report. In response to a question from Mr. Walker, Mr. DeMarinis stated that a notice are sent out 10 days after a report isn't received, an additional notice is sent a few weeks after that, and the final Show Cause notice is sent out approximately 60 days after the full late fee amount has accrued.

5. Voting Systems

Procurement

Ms. Lamone reported that evaluations have started on the responses to the voting system equipment contract and the voting system support services contract.

Municipal Elections

Ms. Lamone reported that several local boards have been preparing voting units and conducting Logic and Accuracy (L&A) for municipal elections to be held on November 3rd, 2009. These municipalities include

Annapolis, Frederick, Bel Air, Aberdeen and Chestertown. Since pollbooks will be used at these elections, databases, L&A test scripts and control count reports were prepared.

Electronic Pollbooks

Ms. Lamone reported that the functional requirements document for pollbook ballot-on-demand printing and client/server capability has been completed. Required changes are currently being programmed under the direction of ES&S' Electronic Pollbook service group in Roseville, California. A pre-release version of the software for testing by SBE is scheduled for delivery in mid-November.

Touchscreen Maintenance

Ms. Lamone reported that most local boards – all of Phase II and Baltimore City – have received new touchscreen batteries for the TS units that are to be retained for the 2010 election. The local boards have begun the process of installing these batteries for approximately 3300 voting units.

6. Information Technology

Ms. Lamone noted the information technology division is busy and noted some of the following actions:

- Updated several SBE hardware/software licenses and support
- Completed Oracle priority patch
- Completed several third party software upgrades/patches
- Posted updated candidate lists to the web
- Provided comparison tables for MVA voter look-ups
- Rebuilt 2 desktop computers and 2 laptops
- Provided expanded memory for and reimaged eight old computers to maintain operability
- Completed several Web site updates
- Completed numerous updates to the on-line library
- Completed monthly updates to PBX
- Facilitated VPN demonstration for future Early Voting Poll Book networking
- Completed material inventory updates to 6 local boards
- Completed updated Accessibility Training – Natasha W.
- Completed update FMIS training – Thomas Q.
- Completed Basic Virtual Ware – Vincent O.
- Processed 1 employee background check and 1 contractor clearance
- Conducted LBE Security audits at Allegany, Howard and Wicomico Boards of Election (for Legislative Audit)
- Updated 34 MDVOTERS user access accounts
- Conducted several MDVOTERS user access analysis for the legislative audit (system audit and LBE audits)
- Conducted a firewall configuration analysis for legislative audit team.

7. Update from Prior Meeting

Legacy Leadership

Ms. Lamone reported that staff has asked five of the ten legacy leaders who attended last month's meeting to fulfill specific internship roles at SBE. The five interns that will be working with SBE are:

1. Tim Lawrence – He has not begun working yet, but we plan to utilize his skills with tracking legislation during session.
2. Robert Bruce – He is working with the voting system team on the planning and execution of mock election testing.
3. LaVera Burnim – She is working with the Candidacy and Campaign Finance Division on reviewing referrals to the Central Collection Unit.
4. Edward Post – He has not begun working yet, but we plan to utilize his skills with a variety of projects including Candidacy and Campaign Finance and voting system project management.
5. Sandra Rayford – She is working on revising SBE's employee manual and other procedures.

The legacy leaders are primarily retired professional and executives and offer a great service.

Republican State Central Committee

Ms. Lamone reported that, pursuant to the agreement, the Maryland GOP made its first monthly payment to the Steele for Maryland Committee. The payment and accounts were verified by SBE via its monthly meeting with the Maryland GOP. Additionally, the Maryland GOP has been working on amending all of its campaign finance reports to accurately reflect the debt to the law firm and its subsequent payment by the Steele for Maryland Committee. The amended report issue should be resolved soon.

LBE By-laws status

Finally, Ms. Lamone reported that, in the meeting materials, is a status of all of the LBEs in adopting bylaws. There are only three counties that have not adopted bylaws – Baltimore County, Frederick County, and Montgomery County. All have indicated that they plan to take this issue up in the near future.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported that on October 19, 2009, a federal district court judge dismissed all claims against all defendants in Kendall v. Howard County Maryland, Civil No. JFM-09-660, (U.S.D.C., D. Md.), among which were claims against defendants Robert L. Walker and Linda H. Lamone, in their official capacities, and against the State Board of Elections ("SBE"). Plaintiffs had challenged a decision of the Howard County Board of Elections not to certify plaintiffs' referendum petition due to their failure to submit the required number of valid signatures before the deadline. In dismissing plaintiffs' claims, the court found that Maryland's petition signature verification standards, set forth in Section 6-203 of the Election Law Article, are "non-discriminatory and content-neutral," as required by the First Amendment. Memorandum Opinion (Oct. 19, 2009) at 10. Assistant Attorney General ("AAG") Sandra Benson Brantley represented SBE in the litigation.

REGULATIONS

Ms. Trella presented proposed changes to 33.06 (Petitions), 33.07 (Election Day Activities), and 33.08 (Canvassing). She noted that the proposed changes were part of the agency's regulatory review process and included changes to update terminology, procedures, and references to the Election Law Article and suggestions by the local boards of elections. There were no questions or discussion about the proposed changes.

Ms. Trella then presented new proposed regulations for 33.17 (Early Voting) and explained that the proposed language generally tracked existing regulations for election day. Ms. Trella stated that Chapter 03 addresses the public education plan for early voting plan and incorporates the statutory requirements, Chapter 04 relates to preparing an early voting center and how much equipment to allocate per early voting center, and Chapter 05 addresses election judges for early voting. In response to a question from Mr. Walker, Ms. Trella explained the rationale behind the proposed allocation of voting equipment, electronic pollbooks, and ballot on demand printers.

[Pursuant to § 2-102(c) of the Election Law Article, the powers and duties of the State Board may only be exercised by an affirmative vote of a supermajority of the Board. Since a supermajority was not present, the Board did not vote on the proposed regulations.]

APPROVAL OF EARLY VOTING CENTERS

Mr. Goldstein reported that the Howard County, Harford County, and Dorchester County Boards of Elections had submitted their early voting site selection forms for the State Board's approval. Mr. Goldstein stated that staff had reviewed the forms and supporting materials from each county and found them to be complete and in compliance with the requirements established by the State Board in the recently approved proposed early voting regulations (33.17.02). Generally, the Board reviewed photos, maps, site layouts and population data for each of the sites. It was noted that the proposed Dorchester County site was located in the lobby of the government building in which the local board office was located. While the early voting center could not be closed off and secured during non-voting hours, the equipment and supplies could easily be relocated to and secured in the board office during non-voting hours.

Pursuant to § 2-102(c) of the Election Law Article, the powers and duties of the State Board may only be exercised by an affirmative vote of a supermajority of the Board. Since a supermajority was not present, the Board did not take any formal action to adopt the early voting centers. However, the three members present did indicate that they were inclined to approve the centers presented by Harford, Howard, and Dorchester Counties.

WAIVERS OF CAMPAIGN FINANCE LATE FEES

Since there was not a supermajority present, the Board did not review or vote to approve requested waivers of campaign finance late fees.

OLD BUSINESS

State Board of Elections Bylaws

Mr. Walker noted that, at the last meeting, the Board unanimously voted to approve the bylaws, subject to a final review and validation of the agreed upon amendments to the bylaws. The bylaws were amended and sent to all of the Board members for review. All of the members indicated that they agreed the bylaws were consistent with the amendments proposed at the September 24th meeting. Accordingly, the bylaws are formally adopted and confirmed. Mr. Walker directed staff to post the bylaws on the SBE website.

Public Testimony at State Board Meetings

Mr. Walker reviewed the procedure for a member of the public to address the State Board at a meeting. In advance of the meeting, an individual who wishes to address the State Board must submit to staff a written request, that includes the subject to be addressed. Whenever possible, the request will be honored at the next Board meeting. The participant will either be added to new business or asked to provide his or her input during the relevant subject.

Petition for Declaratory Ruling

Mr. Darsie noted that there was a memorandum from staff regarding the Petition for Declaratory ruling submitted by the Constitution Party Chairman. The memorandum advises no action be taken. Mr. Darsie also noted that a recent clarification memorandum submitted by the Constitution Party presented a slightly different request – specifically a petition for rule making – not a petition for a declaratory ruling. Ms. McGuckian asked whether the new request changed the advice in the memorandum. Mr. DeMarinis stated that it would not. Ms. McGuckian also asked whether the Board had the authority to make the rule change being requested.

NEW BUSINESS

There was no new business.

SCHEDULE FOR THE NEXT MEETING

The next meeting is scheduled for December 17, 2009, at 2:30 p.m.

ADJOURNMENT

Mr. Walker adjourned the meeting at 3:25 p.m.