

State of Maryland 

State Board of Elections Meeting – January 28, 2010

Attendees: Robert L. Walker, Chairman
Bobbie Mack, Vice Chairman
Rachel T. McGuckian, Member
David McManus, Member
Charles Thomann, Member
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
Matt Libber, Project Management Office

Also Present: Ken Barksdale, Sr., Prince George's County Board of Elections
Alisha Alexander, Prince George's County Board of Elections
Mary Kiraly, Montgomery County Board of Elections
Susan Achran, League of Women Voters Maryland
Abigail Goldman, Baltimore City Board of Elections
Maria Johnson, Baltimore City Board of Elections
Holly Joseph, Save Our Votes
Rita Reimer, Save Our Votes
Stan Boyd, Save Our Votes
Jerrold Garson, Montgomery County Board of Elections
Tom Feehan, ES&S
Anthony Gutierrez, Wicomico County Board of Elections
Lynn Garland

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:33 p.m. and declared that a quorum was present.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the December 17, 2009, board meeting were presented for approval. Ms. Mack made a motion to approve the minutes, and Mr. Thomann seconded the motion. The motion was approved unanimously.

ADMINISTRATOR'S REPORT

As Ms. Lamone was attending a conference, Mr. Goldstein presented the Administrator's Report.

1. Announcements

Mr. Goldstein reported that the hiring of two new employees to fill the vacancies in the Information Technology Division and the Candidacy and Campaign Finance Division is almost complete. Consistent with our past practices, the Campaign Finance position will be filled by Victorica Smith who is currently employed as a contractual employee.

2. Meetings and Important Dates

National Association of State Election Directors' (NASSED) Winter Meeting

Mr. Goldstein noted that NASSED's winter meeting is scheduled from January 28th through 30th in Washington, D.C. According to the meeting agenda, the NASSED membership will receive briefings from representatives of the U.S. Election Assistance Commission (EAC) and the Census Bureau, updates from Congressional staff members, suggestions on using federal funds to improve access by individuals with disabilities to the electoral process, and a presentation by Tom Perez, head of the U.S. Department of Justice's Civil Rights Division and former Secretary of Maryland's Department of Labor, Licensing and Regulation.

Mr. Goldstein noted that, just prior to the board meeting, a delegation from the Republic of Georgia met with staff members. The members of the delegation included political party and election officials, and they were briefed on election administration in Maryland.

3. **Election Reform & Management**

U.S. Election Assistance Commission's (EAC) Election Operations Assessment

Ms. Trella explained that both Ms. Lamone, as a member of the EAC's Board of Advisors' Voting System Standards Committee, and she, as a member of the EAC's Standards Board's Ad Hoc Voting System Committee, reviewed the Phase II document of the Election Operations Assessment and will be providing comments that the full boards can review as they provide comment on this document. The EAC commissioned this effort to assist with the development of future Voluntary Voting System Guidelines and includes the identification of threats for seven types of voting systems and operations (*i.e.*, DRE, precinct count optical scan, vote by phone) and a tool for the EAC and other advisory boards to use in developing future voting system standards.

HAVA Requirements Payments

Earlier this month, Ms. Trella reported that SBE received \$3,893,622 in requirements payments for FY08 and \$1,810,987 in requirements payments for FY09. These funds are earmarked for specific projects in the proposed FY2011 budget. The EAC recently notified election officials that requirements payments for FY 2010 are available and offered a briefing on the process to obtain these funds.

Military and Overseas Voters Empowerment (MOVE) Act

The MOVE Act requires that elections officials mail to certain voters absentee ballots at least 45 days before an election but establishes a process to request from the U.S. Department of Defense's Federal Voting Assistance Project a waiver of the 45 day deadline. As Maryland will not be able to meet the 45 day deadline for the 2010 General Election (the provision is not in effect for the 2010 Primary Election), Ms. Trella reported that SBE will be submitting a request for a waiver. According to information from the Federal Voting Assistance Program, they are not yet prepared to accept waiver requests and have not provided a timeframe for when they expect to be ready.

Election Official Preparedness and Professional Development Program

Ms. Trella stated that the inaugural course of the Election Official Preparedness and Professional Development Program was held on January 15th. Keith Ross conducted the Project Management Course, and 30 local election officials attended. The feedback was very positive, and this course will be offered again for the western part of the State. A trial run of the Voter Registration Policies and Procedures Course (conducted by Roger Stitt) was held on January 11th and a voter registration class was being held today. Several local election officials as well as several SBE staff members attended, and like the other course, the feedback was very positive. Because of the level of interest, Ms. Trella reported that additional classes of each course will be offered.

4. **Voter Registration**

Data Center Refresh

Mr. Goldstein reported that the data center refresh was successful. Both the Annapolis and Cumberland site are up and running with minimal downtime to the MDVOTERS' user community.

MDVOTERS Software

The latest release of software for MDVOTERS is being applied the weekend of February 6th. This release focuses on election judges and early voting.

The Voter Registration Division and Saber/EDS/HP held the annual planning meeting. This year's meeting focused on identifying additions to MDVOTERS that are necessary prior to the election and what will wait until the final software release of this contract. The contract ends December 31, 2010, and it is anticipated that the Request for Proposals for MDVOTERS software support will be issued in March 2010.

5. **Candidacy and Campaign Finance**

Annual Campaign Finance Report

On January 20, 2010, the 2010 Annual Campaign Finance Report was due for all campaign finance committees. The transaction period ended on January 13th. From preliminary reports, the Candidacy and Campaign Finance Division has received reports from over 80% of the committees required to file. The remaining committees are late and are being assessed late fees. The maximum late fee penalty is \$250.

EAffidavit

Nearly 6% of all of the filed reports used the EAffidavit. The EAffidavit, first launched on April 9, 2009, is available on SBE's website and allows the filer to electronically sign and submit the Affidavit of Limited Contributions and

Expenditures. Users were very satisfied with ease and convenience of online filing. This was the first major reporting period it was used, and there were no problems.

Prohibition on Fundraising During Session

Mr. Goldstein reported that the fundraising prohibition for all current office holders began on January 13th at noon. This prohibition on raising or depositing funds applies to the Governor, Lieutenant Governor, Attorney General, Comptroller and members of the General Assembly and continues through the end of the legislative session.

Disclosure Report

On February 5, 2010, the semi-annual Contribution Disclosure Form, a required filing by either a person who does business with the State involving consideration of \$100,000 or more and makes campaign contributions of \$500 or more or a person who provides lobbyist compensation and makes campaign contribution greater than \$500, is due. The Candidacy and Campaign Finance Division received over 270 disclosure forms from qualifying persons from the last filing.

6. Voting Systems

Certification

Mr. Goldstein reported that the voting system team's focus has been on the certification of the new optical scan system, which will be presented later in the meeting.

Batteries

The division has also been managing, in cooperation with the local boards of elections, the battery replacements for those DRE units that are to be kept and used for the 2010 elections. Mr. Goldstein noted that if the State uses the current voting system for the 2010 elections, all voting units initially implemented in the 2004 elections will need new batteries.

Electronic Pollbook

The division has been working closely with ES&S software development and project management teams in Vancouver, British Columbia and Roseville, California to evaluate new and updated applications software to be used on the electronic pollbooks and EPIC server in the 2010 election cycle. Mr. Goldstein noted that the efforts are focused on the electronic pollbooks working with ballot on demand printers and verifying that there are sufficient networking capabilities.

7. Information Technology

Mr. Goldstein referred the board members to the list of activities performed by the Information Technology Division in the Administrator's Report.

8. Update from Prior Meeting

Military and Overseas Voters Statistics

At the December board meeting, Mr. Walker requested the number of military and overseas voters eligible to vote in Maryland. Mr. Goldstein referred the board members to the information in the Administrator's Report about the estimated number of military and overseas voters who claim residency in Maryland.

ES&S Voting System – Other Jurisdictions

In response to questions from the December board meeting, Mr. Goldstein reported that Cuyahoga County, Ohio, 14 counties in Florida, and four counties in New York (and two new counties have been added, including New York City) use the voting system proposed by ES&S. In response to a question from Ms. Mack, Mr. Goldstein reported that Cuyahoga County, Ohio purchased 1,500 units (in comparison to Maryland's anticipated purchase of 2,100 units) and the counties in Florida include two of the counties with the highest population.

In response to a question from Mr. McManus, Mr. Goldstein summarized the briefing held by the House of Delegates' Ways and Means Committee on January 27, 2010. He stated that the Committee requested that they be briefed on the voting system procurement, the MOVE Act, and early voting and noted that the members of the Committee were most interested in the voting system procurement and the anticipated costs of the implementation. Specifically, the Committee members expressed concern about whether the costs are reasonable and competitive.

Mr. McManus asked on what bills or at what hearings was the agency asked to provide testimony, to which Ms. Duncan referred the board members to the legislative tracking chart in their folders. She noted that the chart is updated weekly and posted to the Online Library every Friday. Ms. McGuckian inquired as to whether the agency's position is based on previously issued testimony or approved by the board members. Mr. Goldstein responded that the

agency generally takes no position on legislation and only offers the impact on election administration for election-related bills.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported on the impact of the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission* on Maryland. He advised that it appears that the decision has no impact on Maryland's current law, because Maryland and approximately half of the states do not restrict independent political expenditures by non-profit or for-profit corporations. Mr. Darsie noted that while the Attorney General's Office has received inquiries from members of the General Assembly, he is not aware of any specific proposals from the legislature.

PRELIMINARY CERTIFICATION OF THE VOTING SYSTEM

Mr. Goldstein referred the board members to the document titled *Election Systems and Software Unity 3.2.0.0 Certification* and explained that the document includes the relevant provisions of the Election Law Article and the Code of Maryland Regulations with annotations explaining how the voting system proposed by ES&S meets the statutory and regulatory requirements. Mr. Aumayr explained that the certification testing included setting up a primary election, general election, and early voting, loading results in the central election database, and counting ballots on both the central count and precinct count scanners to verify the accuracy of the counting.

Mr. Goldstein stated that the proposed voting system generally met all of the requirements and raised three issues. First, the proposed voting system does not include a protective counter. Mr. Goldstein explained that the protective counter is the count of all ballots counted by the optical scan unit (as opposed to the public counter which shows the number of ballots counted in an election), and the requirement is left over from the use of mechanical lever machines when tracking the votes cast was necessary for maintenance purposes. ES&S has acknowledged that the proposed voting system does not include a protective counter and has agreed to include it in a future version. In the meantime, the company has contractually agreed to maintain records of the number of ballots each machine has counted until the future version is installed. Mr. Goldstein stated that the protective counter does not relate to the core function of the voting system and should not hold up certification of the proposed voting system. In response to a question from Ms. Mack, Mr. Goldstein responded that when the version with the protective counter is available, it will be installed at no cost to the State or local boards.

The second issue relates to the requirement that a bidder's technical data package include the system's software source code. ES&S did not provide its system source code with the technical data package, but a non-disclosure agreement has been signed and the source code is expected shortly. In response to a question from Ms. Mack, Mr. Goldstein responded that the source code will be placed in escrow in case it is needed for any reason. She then asked about how software is verified to ensure that the version received by the State is the same version that was certified by the EAC. Mr. Aumayr explained that a file signature is used to compare the software to the EAC-certified version.

The third issue relates the requirement that a bidder must provide a list of all jurisdictions using the same system and a breakdown of the per unit price and the price of any components in those jurisdictions. Mr. Goldstein reported that while this information was not provided at the time the certification documentation was distributed, the per unit costs for jurisdictions in Ohio, Florida, and New York were provided. These unit costs confirmed that the price the State of Maryland received is slightly less than other counties. In response to a questions from Ms. McGuckian, Mr. Goldstein noted that the per unit cost to the State is \$7,000 but the State received a discount on the entire cost of the contract. When the discount is applied to the per unit cost, the per unit cost the State received is less than the per unit cost from the other jurisdictions. Ms. McGuckian asked to see the information provided by ES&S.

Mr. McManus asked about the accessibility standards, and Mr. Aumayr explained that the optical scan voting unit meets the accessibility standards of the 2002 Voluntary Voting Standards for height and reach requirements, for example, but not for visual impairments. Mr. Goldstein explained that concerns raised by the advocates for voters with disabilities are the height of the slot to deposit the voted ballot and access to the screen that provides information about overvotes. After discussing these issues with the advocates, it was agreed that working with the disability community and implementing certain procedures could mitigate these issues.

Mr. Goldstein explained to the board members that the certification before the board for consideration was preliminary as final certification was dependent on the adoption of regulations. He noted that the agency is moving forward with the procurement process in case funds for the project are reinstated in the FY 2011 budget. Mr. McManus asked whether the law requires certification, to which Mr. Darsie responded that certification is required before the system is used but not before entering into the final contract or receiving approval from the Board of Public Works. Ms. McGuckian made a motion to deny preliminary certification of Election Systems and Software's Unity 3.2.0.0. because pricing information required by regulation was not provided, and Ms. Mack seconded the motion. The motion passed 4-1.

REGULATIONS

Ms. Trella presented, for final adoption, the proposed changes to 33.17.03 (Public Notice of Early Voting), 33.17.04 (Early Voting Center Equipment and Set-up), and 33.17.05 (Election Judges). She noted that the proposed regulations were published in the December 4, 2009, edition of the *Maryland Register* and no public comments were received. In response to a question from Ms. Mack about local board input, Ms. Trella explained that the proposed regulations were discussed at meeting of the SBE/Maryland Association of Election Officials 2010 Election Task Force and that there were at least two notices in the County Bulletin about the public comment period. Ms. Mack made a motion to adopt these proposed regulations as final, and Mr. McManus seconded the motion. The motion passed unanimously.

Ms. Trella presented proposed changes to 33.05 (Voter Registration) and noted that the proposed changes were part of the agency's regulatory review process. The proposed changes to 33.05 included updating regulations to reflect procedures established when Maryland implemented a statewide voter registration system, procedures required to comply with the MOVE Act, removing terms and requirements no longer used, and updating regulations on voter registration volunteers. Ms. Mack made a motion to adopt the proposed changes to 33.05, and Mr. McManus seconded the motion. The motion passed unanimously.

Ms. Trella then presented proposed changes to 33.11 (Absentee Voting) and miscellaneous subtitles (33.01.01.01, 33.04.03.01, 33.08.04.02, 33.10.02.14, and 33.17.02.02G) and noted that most of the proposed changes were part of the agency's regulatory review process. The proposed changes to 33.11 included incorporating the current *Procedures for the Administration of Absentee Voting* into regulations, updating regulations to reflect the current process of reviewing and canvassing absentee ballots, and incorporating procedures required to comply with the MOVE Act. Ms. Trella summarized the proposed changes to other subtitles, which include defining terms used in multiple subtitles, correcting a previous drafting oversight, consolidating canvassing requirements into one regulation, and changing the pre-election testing schedule to accommodate early voting. Ms. Mack made a motion to adopt the proposed changes to 33.11 and the other subtitles, and Mr. McManus seconded the motion. The motion passed unanimously.

APPROVAL OF EARLY VOTING CENTERS

Mr. Goldstein provided an overview of the early voting centers proposed by the **Anne Arundel County Board of Elections**. Except for the population threshold requirement, all of the sites met the criteria established in COMAR 33.17.02, including being accessible by public transportation and for voters with disabilities. Mr. Goldstein explained that because of the county's geographical attributes, it was difficult to meet the 80% threshold requirement. As proposed, 76% of the county's registered voters reside within ten miles of a proposed center. The proposed early voting centers are:

- North County Library
- Edgewater Library
- West County Area Library
- Severna Park Library
- Annapolis Senior Activity Center

Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting centers. Mr. Thomann made a motion to accept the recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of the early voting centers proposed by the **Baltimore City County Board of Elections**. All of the sites met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. The proposed early voting centers are:

- Edmondson Westside High School
- Library #10
- Pleasant View
- Public Safety Training Facility
- St. Brigid's Parish Center

Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting centers. Ms. Mack made a motion to accept the recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved.

Mr. Goldstein provided an overview of the **Calvert County Board of Elections'** proposed early voting center in the Community Resource Building in Prince Frederick. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Ms. Mack

made a motion to accept the recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved.

Mr. Goldstein provided an overview of the **Caroline County Board of Elections'** proposed early voting center in the Health and Public Services Building in Denton. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Ms. McGuckian made a motion to accept the recommendation, and Ms. Mack seconded the motion. The motion was unanimously approved.

Mr. Goldstein then provided an overview of the **Frederick County Board of Elections'** proposed early voting center in the Frederick Senior Center in Frederick. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Mr. Thomann made a motion to accept the recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of the **Garrett County Board of Elections'** proposed early voting center in the Oakland Armory Building in Oakland. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Ms. McGuckian made a motion to accept the recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of the early voting centers proposed by the **Prince George's County Board of Elections**. Mr. Goldstein noted that, although information about Peppermill Community Center in Landover was included in the information, the board of elections has withdrawn that proposed center due to concerns raised about the traffic pattern and ease of access to this proposed center. In response to these concerns, the Prince George's County Board of Elections has substituted it with the Sports and Learning Center also in Landover. Ms. Mack expressed her concern with the Sports and Learning Center as parking is very difficult when there are events at the facility and the meeting rooms are a significant distance from the entrance to the facility. Ms. Alexander confirmed that the meeting rooms are 150-200 feet from the entrance, noted that she is awaiting a schedule of events at the facility during the early voting periods, and intends to request that certain parking spots be reserved for early voting.

All of the sites met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. The proposed early voting centers are:

- Sports and Learning Center
- Bowie Library
- Oxon Hill Library
- College Park Community Center
- Upper Marlboro Community Center

Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting centers. Mr. McManus made a motion to approve four sites (excluding the Sports and Learning Center), and Ms. McGuckian seconded the motion. The motion was unanimously approved. Information and photographs of the Sports and Learning Center will be provided to the board members by email for review and preliminary approval.

Mr. Goldstein then provided an overview of the **Queen Anne's County Board of Elections'** proposed early voting center in the election office in Centerville. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Mr. McManus made a motion to accept the recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of the **Somerset County Board of Elections'** proposed early voting center in the County Office Complex in Princess Anne. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Mr. McManus made a motion to accept the recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Mr. Goldstein provided an overview of the **St. Mary's County Board of Elections'** proposed early voting center in the Government Center – Potomac Building in Leonardtown. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr.

Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Mr. McManus made a motion to accept the recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Mr. Goldstein then provided an overview of the **Talbot County Board of Elections'** proposed early voting center in the Operations Center in Easton. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Ms. McGuckian made a motion to accept the recommendation, and the motion was seconded. The motion was unanimously approved.

Mr. Goldstein next provided an overview of the **Wicomico County Board of Elections'** proposed early voting center in the Youth and Civic Center in Salisbury. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Ms. Mack made a motion to accept the recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Mr. Goldstein provided an overview of the newly proposed site for **Worcester County Board of Election.** This proposed early voting center is the Gull Creek Community Center in Berlin, and 65% of the county's population resides within ten miles of the proposed center. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Mr. Goldstein presented the Administrator's recommendation to approve the proposed early voting center. Ms. Mack made a motion to accept the recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved. The Board thanked the Worcester County Board for reevaluating sites and submitting this new proposal.

OLD BUSINESS

In response to a question from Ms. McGuckian, Ms. Wagner noted that she would verify that SBE's website included approved minutes from prior meetings.

NEW BUSINESS

Proposed SBE Policy on Electioneering Zones at Polling Places

Ms. Trella explained that a local board attorney had previously inquired as to whether there was a requirement that a polling place must have an electioneering zone. In response, Mr. Darsie advised that there was no requirement but it would be appropriate for the State Board to adopt a policy on this issue. Ms. Trella explained that the proposed policy applies the same electioneering considerations to election day polling places that are applied to early voting centers. Under the proposed policy, the local board of elections must consider whether a potential polling place can accommodate electioneering and if the potential polling place cannot accommodate electioneering, the local board is required to try to find another facility that can accommodate it. Ms. McGuckian suggested requiring a local board to inform the State Administrator if it was unable to find a facility that would accommodate electioneering and why the facility cannot accommodate it. Ms. McGuckian made a motion to approve the proposed policy with her additional language, and Mr. McManus seconded the motion. The motion passed unanimously.

Fair Campaign Financing Fund

Mr. DeMarinis submitted to the Board the expenditure limits for publicly financed gubernatorial candidates and explained the formula established by law for determining the expenditure limit. Based on the calculations of the prescribed formula, the expenditure limit for a publicly financed gubernatorial candidate would be \$2,298,018.93. Ms. Mack made a motion to approve the expenditure limit at \$2,298,018.93, and Mr. McManus seconded the motion. The motion passed unanimously.

SCHEDULE FOR THE NEXT MEETING

The next meeting is scheduled for February 25, 2010, at 2:30 p.m.

ADJOURNMENT

Mr. Walker adjourned the meeting at 4:04 p.m.