

# State of Maryland

## State Board of Elections Meeting – March 25, 2010

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Attendees: Robert L. Walker, Chairman  
Bobbie Mack, Vice Chairman  
David McManus, Member  
Charles Thomann, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Jeff Darsie, Assistant Attorney General  
Donna Duncan, Election Management Director  
Mary Wagner, Voter Registration Director  
Nikki Trella, Election Reform Director  
Jared DeMarinis, Candidacy and Campaign Finance Director  
Paul Aumayr, Voting System Project Manager  
Valerie O'Connor, Budget and Fiscal Management Director  
Michael Kortum, Chief Information Officer  
Matt Libber, Project Management Office

Also Present: Stan Boyd, Save Our Votes  
Holly Joseph, Save Our Votes  
Jerrold Garson, Montgomery County Board of Elections  
Sara Harris, Montgomery County Board of Elections  
Barbara Sanders, League of Women Voters of Maryland

### **DECLARATION OF QUORUM PRESENT**

Vice Chairman Mack called the meeting to order at 2:40 pm and declared that a quorum was not present.

### **ADMINISTRATOR'S REPORT**

#### **1. Announcements**

Ms. Lamone reported that Donna Wiltshire has announced that she will be leaving SBE early next month. During her time here, Ms. Wiltshire oversaw two major voting system solicitations, the implementation of the Presidential General Election call center, the office lease and upgrades, and numerous other procurements and projects. Ms. Lamone wished her well in her next endeavor.

#### **2. Meetings and Important Dates**

##### House FY 2011 Budget Hearing

On March 3<sup>rd</sup>, the House's Subcommittee on Public Safety and Administration held its budget hearing on SBE's FY 2011 Budget Hearing. The Department of Legislative Services' analysis did not include any budget cuts, recommended the submission of a report on existing and planned contracts and funding needs for the 2010 elections, and requested an update on the progress of early voting implementation, fiscal year end close out activities, and the funding for using the current voting system and the election-support services. Ms. Lamone noted that a copy of the Department of Legislative Services' analysis of the proposed FY 2011 budget and the response to the analysis was provided during the February meeting.

##### Election Directors' Meeting

A conference call with the election directors was held on March 16<sup>th</sup>. During this meeting, the following topics were discussed: the impact of the U.S. Department of Justice's order for ES&S to sell Premier's intellectual property, voting unit allocation, use of absentee ballots for voters who prefer to vote a paper ballot, and the importance of the monthly MDVOTERS user access report. The next election directors' meeting is scheduled for April 13<sup>th</sup>.

#### **3. Election Reform & Management**

##### Election Official Preparedness and Professional Development Program

Classes for this program were rescheduled due to weather, but interest continues to remain high. At the upcoming MAEO/SBE biennial conference, the Law & Ethics class will be offered on Sunday, May 16<sup>th</sup>. Bill Varga, the Office of the Attorney General's resident expert on the State's Public Information Act and Open Meetings Act, will educate the attendees on these two laws, and Ms. Trella will provide information about

various federal election-related laws. Because of the topic and its relevance to all members of the election community, local board members and attorneys will be invited to attend.

#### U.S. Election Assistance Commission (EAC): Proposed Policy on Maintenance of Expenditures

The Help America Vote Act (HAVA) requires each state to maintain the level of spending spent in FY2000 on activities subsequently required by HAVA. This requirement is generally called the maintenance of expenditures or maintenance of effort requirement or, for short, the MOE requirement. The EAC had previously issued policies on this topic but subsequently suspended enforcement of the policy. After hiring a professional grants director last year, the EAC met with state and local election officials to discuss this requirement and last month released for public comment a proposed policy on the MOE requirement. The proposed policy addresses how to calculate the FY 2000 maintenance of expenditures (baseline MOE) and how to annually meet the MOE requirement and is generally an improvement on the EAC's prior policies on this issue.

#### **4. Voter Registration**

##### MDVOTERS

Ms. Lamone reported that a new version of the MDVOTERS software will be released at the end of the month. This release is the largest since the implementation of the system. There are over 70 new items, many of which will help administer early voting. User testing of the new release will begin immediately. Ms. Lamone explained that user testing will take approximately one week, and at the conclusion of the user testing, a list of identified issues will be submitted to the vendor for resolution. Once resolved and an updated version of the software is available, there will be a two week mock election on the new software.

##### MVA Letters

The next round of MVA letters will be mailed early April. Ms. Lamone explained that these letters are sent to individuals who, during an MVA transaction, indicated that they wanted to register to vote or update their existing voter registration but are either not registered or have information in MDVOTERS that does not match their MVA data. Approximately 30,000 letters will be sent to verify address changes, name changes, and capture potential new registrations not currently in MDVOTERS.

In response to a question from Mr. McManus about the number of new registrations generated by these mailings, Ms. Wagner explained that MVA used SBE's voter registration application for the last mailing, and therefore, SBE was unable to distinguish applications received as a result of the mailing and other applications. MVA will be using its voter registration application for the next mailing, and therefore, SBE will be able to track the number of new registrations generated as a result of the mailing.

##### Local Boards

Ms. Lamone reported that the Voter Registration Division is working closely with the 24 local boards to ensure the voter registration list is accurate prior to the upcoming election as instructed by the law. Local boards are identifying potential duplicate records. SBE is assisting the local boards with the MVA verification process which moves a voter from Pending to Active status.

#### **5. Candidacy and Campaign Finance**

##### Candidate Filings

As of March 23<sup>rd</sup>, 126 candidates have officially filed for the 2010 Gubernatorial Election.

##### Summary Guide

Ms. Lamone reported that Mr. DeMarinis and Mr. Darsie are making progress on finalizing a revised *Summary Guide to Maryland Candidacy and Campaign Finance Laws*. The new version will be published after the legislative session.

##### Enforcement Actions

The Candidacy and Campaign Finance Division continues to monitor the progress of the Maryland Republican State Central Committee in repaying the outstanding debt to the Michael Steele for Maryland Committee. All parties are in compliance with the Memorandum of Understanding.

#### **6. Voting Systems**

##### Mock Election

SBE is in the process of planning for a statewide integrated mock election scheduled June 17<sup>th</sup> through June 29<sup>th</sup>. During this mock election, SBE and the local boards will be testing several technical and procedural functions that will provide a level of confidence in the collective ability to successfully perform the early voting and election day procedures. In addition, it will allow the local boards to test the electronic pollbook connectivity. The mock election exercise will involve SBE and all 24 local boards executing a primary election

and will include the steps of an election including ballot production, five days of simulated early voting, one day simulating an election day, election reporting, and canvassing. In addition, going through this mock election will allow for corrective actions to take place for this and future elections and provide a foundation for future mock elections. Keith Ross has assembled an advisory committee of local election officials to help plan this effort.

#### Voting System

The election services contract has been signed with Cirdan, and a notice to proceed has been given. The contract is off to a good start with Cirdan hiring all six of the regional managers previously employed by Election Systems & Software (ES&S). The regional managers will continue their support of the project and the local boards. They have consistently provided excellent support and services and are considered an integral component for a successful election. Ms. Lamone reported that the regional managers provide continuity of service and knowledge.

The Voting Systems Division has continued to dedicate time on maintenance and preparation of the current touchscreen system for the 2010 elections. The pre-election questionnaire has been sent to the local boards to assist in determining the amount of support required for the 2010 Elections. In addition, maintenance procedures have also been sent out for the GEMS servers and ancillary items. For the touchscreen units, SBE is getting quotes for battery replacement of some of the units in the Phase II and Phase III counties.

Another focal point has been early voting, where the drafting processes and procedures for the voting system are ongoing, and testing has begun.

#### Electronic Pollbooks – Networking

SBE has continued testing the early voting wide area network with the addition of the virtual private network (VPN) security layer. A simulated early voting test was conducted on March 23<sup>rd</sup> with 11,600 ballots issued from six electronic pollbooks over a 14-hour period. Ms. Lamone reported that there were no dropped transactions and it took an average time of 1.5 seconds to update the server database.

#### Post Early Voting Update

Database programming necessary to update pollbook voter status from the EPIC server has been completed and tested. This will enable the local boards, after the close of early voting, to quickly update their election day pollbooks with early voting and current absentee status by temporarily connecting the pollbooks to the early voting wide area network.

#### Pollbook Software Development

Ms. Lamone reported that the ES&S software development team plans to have all corrections and enhancements to the electronic pollbook software completed by March 26<sup>th</sup>. This means that the 2010 production version of the software should be ready by mid-April for the software upgrade process on 6,000 pollbooks.

Ms. Lamone reported that SBE is working with the Montgomery County Board of Elections and the Montgomery County School Board to test early voting networking and turnout reporting in conjunction with the Board of Education election to be held April 28<sup>th</sup>. Pollbooks at all 63 school locations will be using the new version of the electronic pollbook software, and pollbooks at five schools will be connected to the EPIC server via secure wide area network.

### **7. Information Technology**

Ms. Lamone highlighted some of the activities of the Information Technology Division, including:

- Completed Oracle license updates and support renewal
- Completed several third party software upgrades/patches
- Provided updates to the data tables for University of Maryland website
- Assisted two local boards with installing new equipment
- Completed troubleshooting and repair of network connections for five local boards
- Assisted four local boards with the repair of peripheral devices
- Provided assistance to 19 campaign finance entities
- Completed database rebuilds for six campaign finance report filers
- Processed five employee background clearances
- Updated 49 MDVOTERS user access accounts
- Completed three firewall configuration changes

Ms. Lamone requested that the board members inform her of their availability for the upcoming Maryland Association of Election Officials/SBE conference scheduled for May 16<sup>th</sup> – 17<sup>th</sup> in Towson.

### **APPROVAL OF THE PRIOR BOARD MEETING MINUTES**

Upon Chairman Walker's arrival, a quorum was present and the minutes of the February 25, 2010, board meeting were presented for approval. Mr. McManus made a motion to approve the minutes, and Mr. Thomann seconded the motion. The motion was approved unanimously.

### **ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Darsie reported the SBE worked with the U.S. Department of Justice and several other states on the civil antitrust complaint and proposed settlement regarding the acquisition by ES&S of Premier Election Solutions. According to the proposed settlement, ES&S will sell all intellectual property, tooling, and other fixed assets in Premier voting equipment to a buyer approved by the Department of Justice. Following the divestiture, ES&S will retain a license to operate and service installed Premier equipment. If approved by the court, the proposed settlement requires ES&S to complete the divestiture within 60 days or five days after entry of the settlement by the court. Mr. Darsie noted that it seemed unlikely that the divestiture will occur within this time frame.

Mr. Darsie also provided a copy of a letter of advice from Assistant Attorney General Sandy Brantley concerning SBE's obligation under existing law to purchase a voter-verified paper record voting system. Mr. Darsie summarized the letter of advice, which states that SBE is under obligation to procure a voting system once funding is available.

### **APPROVAL OF EARLY VOTING CENTER**

Mr. Goldstein presented to the board another location for the early voting center in Kent County. In support of the request to change early voting centers, Ms. Cheemondia Blake, the Kent Election Director, provided the following reasons:

1. The original center, Stephne Train Station, has no storage for the voting units overnight (no door to the room), while the Kent County Library has locked storage;
2. The County will save over \$4,000 by switching to the library;
3. The library has better connectivity and communications; and
4. The library was the first choice, but at the time of the selection, they were renovating the library and not sure if it would be done in time.

Mr. Goldstein reported Ms. Blake also stated that there has been no public outreach for the Stephne Train Station, other than the information posted on SBE's website. In addition, the Kent County Board has met and voted to approve the library and the Board has a firm commitment in writing from the library.

For these reasons, Ms. Lamone recommended the approval of the Kent County Library as the early voting center in Kent County. Mr. McManus made a motion to approval the Kent County Library as the early voting center in Kent County, and Ms. Mack seconded the motion. The motion passed unanimously.

### **APPROVAL OF FORMS**

Ms. Trella presented three forms and documents for approval by the Board: Provisional Ballot Application & Instructions, Oath of Absentee Voter, and Absentee Instructions.

Ms. Trella stated that Part I of the provisional ballot application contains the approved voter registration application, and if the application is changed as a result of legislation, the updated application will be inserted into Part I. In response to a question from Mr. McManus, Ms. Trella explained that Part I is used to register an individual for future elections and that this information is included in the instructions. Ms. Mack made a motion to approve the provisional ballot application and instructions, and Mr. McManus seconded the motion. The motion passed unanimously.

The oath of absentee voter is printed on the back of the return envelope for absentee voters. Ms. Mack made a motion to approve the oath, and Mr. Thomann seconded the motion. The motion passed unanimously.

The absentee instructions are included with the absentee ballot. Mr. Walker asked whether these instructions are posted to the website, to which Ms. Trella responded that most of the information in the instructions is posted but that the instructions in their entirety could be posted as well. Mr. Thomann made a motion to approve the instructions, and Ms. Mack seconded the motion. The motion passed unanimously.

### **APPROVAL OF REGULATIONS**

Mr. Goldstein presented proposed changes to regulations that generally remove references to the optical scan voting system and alters the existing voting unit allocation. Specifically, the proposed changes include:

1. 33.10.02.07: Keeping the ratio of one voting unit for every 200 registered voters but allowing for early voting turnout to be factored when determining the number of registered voters. Under the proposed regulation, the number of registered voters for a precinct is reduced by the estimated early voting turnout (20%).
2. 33.17.02.02: Establishing a process for a local board to submit and the State Board to review a request to change an approved early voting center less than seven months before a primary election.
3. 33.17.04.01 & .03, 33.17.05.02, 33.17.06.05, and 33.17.07.01: Removing references to equipment and supplies used with an optical scan voting system and establishing a voting unit allocation formula for the early voting centers.
4. 33.17.07.04: Providing an exception to the requirement that a local board wait until 8 pm on election day to start "ending the election" on and printing results from the voting units used during early voting. The exception would allow a local board to begin this provision at 2 pm on election day if the local board submitted a written security plan that includes how the election results will be embargoed until 8 pm or when the polls close.

In response to a question from Mr. Thomann, Mr. Goldstein responded that the 20% estimated turnout for early voting was based on research and analysis of early voting turnout from other states in the first election they offered early voting. Mr. McManus asked whether voting units used during early voting will be used on election day, to which Mr. Goldstein responded that they would not be used on election day. Mr. Goldstein confirmed that early voting results will not be reported until 8 pm or when the polls close. In response to a question from Ms. Mack, Mr. Goldstein responded that there will be opportunities to adjust quantities based on prior turnout patterns.

Mr. McManus made a motion to adopt the proposed changes, and Mr. Thomann seconded the motion. The motion passed unanimously.

Ms. Trella presented proposed changes to 33.06 (Petitions), 33.07 (Election Day), 33.08 (Canvassing), and 33.17 (Early Voting) for final adoption. The proposed changes were published in the January 29<sup>th</sup> edition of the *Maryland Register*, and no public comments were received. Ms. Trella explained that six non-substantive changes were being proposed and noted that Mr. Darsie had certified that the changes were non-substantive. The non-substantive changes were:

1. 33.07.04.02 & 33.17.06.04B: Clarifies the section by removing a phrase ("audible electronic devices") that is covered by "electronic communication devices" and reorganizing the examples of electronic communication devices.
2. 33.08.01.02 & .02-1: Corrects improper grammar (changes two uses of a plural word to singular).
3. 33.17.06.07C: Corrects an improper reference.

Mr. Thomann made a motion to adopt the proposed changes with the non-substantive changes as final, and Ms. Mack seconded the motion. The motion passed unanimously.

## **REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES**

There were no waivers of campaign finance late fees.

## **NEW BUSINESS**

1. *Petition for Declaratory Ruling*: Mr. DeMarinis presented the petition for declaratory ruling from Daniel Vovak requesting that the State Board accept Daniel "The Whig Man" Vovak and/or Daniel "The Wig Man" Vovak as a valid ballot name. Mr. DeMarinis explained that Daniel "The Wig Man" Vovak is a valid nickname under Election Law Article, § 5-301(c)(3), Annotated Code of Maryland but that Daniel "The Whig Man" Vovak is not a valid name as there is currently a political party with that name and the use as a nickname could be misleading.

Mr. Darsie explained that there is no legal consensus as to what constitutes a name and that the Board could interpret a name in the context of election administration. For example, a name could be denied if it caused voter confusion or is an attempt as a public statement, as courts have held that a ballot is not a public forum. Mr. Darsie reminded the Board that the matter before the Board is whether to allow Mr. Vovak to use the word "The" in his name. (Daniel "Wig Man" Vovak has previously been accepted by SBE as a valid name.) Mr. DeMarinis explained that issuing a declaratory judgment would be binding on SBE, the local boards of elections, and petitioner to these facts for this election.

Mr. Thomann expressed his concern that use of nicknames would allow candidates to use all sorts of names and suggested that Mr. Vovak legally change his name.

Mr. Vovak provided a history of his communications with and litigation against SBE and acknowledged that he was willing to drop his request for Daniel "The Whig Man" Vovak if the Board accepted Daniel "The Wig Man" Vovak.

Mr. Darsie noted that while the Board could chose to interpret "name" differently, the petition for declaratory ruling would not be the appropriate vehicle to do so and suggested that the Board could tighten up the use of nicknames in another process.

Mr. McManus made a motion to issue a declaratory ruling permitting the use of Daniel "The Wig Man" Vovak, and Mr. Walker seconded the motion. The motion failed by a vote of 2-1-1. [For the Board to exercise its powers and duties, Election Law Article, § 2-102(c), Annotated Code of Maryland, requires an affirmative vote by a supermajority of the members of the State Board. Since four members did not vote to approve the motion, the motion failed.] Because the motion failed, the State Board did not issue a declaratory ruling on Mr. Vovak's petition. There was a discussion about a motion to reconsider the petition at the April meeting, but there was no corresponding motion.

*2. Presentation by Stan Boyd and Holly Joseph of Save Our Votes:* Mr. Boyd and Ms. Joseph provided the Board with a handout showing the cost comparisons SBE provided at the January 27<sup>th</sup> briefing of the House Ways and Means Committee, SBE's supplemental budget requests, and the difference between the cost comparison and supplemental budget requests.

Mr. Walker stated that the Board and staff members received the email from Rebecca Wilson of Save Our Votes and staff plans to respond by April 2<sup>nd</sup>. In response to a question from Mr. Boyd about the proposed response time, Mr. Walker listed the other activities in which staff members are involved, and Mr. McManus noted that a response by April 2<sup>nd</sup> is a reasonable response time.

In response to a question from Mr. McManus, Mr. Boyd clarified that the Save Our Votes would like an explanation as to why there is a difference between the costs provided at the Ways and Means Committee briefing and the supplemental budget, the types of services included in the row for "all services to related to implementation and general election operations" and "all services related to general election operations," and concerns about absentee voting procedures.

Returning to the petition for declaratory ruling issue, Mr. Darsie confirmed that the action before the Board on Mr. Vovak's petition for a declaratory ruling was limited to adding "The" to his nickname "Wig Man." Mr. Goldstein provided the Board with a history of SBE's communications with Mr. Vovak, and Mr. Darsie noted that the Anne Arundel County Circuit Court dismissed Mr. Vovak's lawsuit for not being timely and in dicta, discussed the merits of the cast (i.e., the use of "The" in Mr. Vovak's nickname).

#### **OLD BUSINESS**

There was no old business.

#### **SCHEDULING OF NEXT MEETING**

Mr. Walker asked that possible dates for the April meeting be circulated for approval.

#### **CLOSED SESSION**

On February 25, 2010, at 3:45 pm, the members of the State Board of Elections met in closed session to be briefed by staff regarding the agency's supplemental budget submission. All four members of the Board present at the February 25<sup>th</sup> public meeting voted to have a closed session under the authority provided in State Government Article, § 10-508(a)(13), Annotated Code of Maryland. In addition to the board members, Ms. Lamone, Mr. Goldstein, Ms. O'Connor, and Mr. Darsie were present. No actions were taken.

#### **ADJOURNMENT**

Mr. Walker adjourned the meeting at 4:05 pm.