

State of Maryland

State Board of Elections Meeting – June 3, 2010

Attendees: Bobbie Mack, Vice Chair
David McManus, Member
Charles Thomann, Member
Rachel McGuckian, 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
Rick Urps, Election Reform Deputy Director
Valerie O'Connor, Budget and Finance Director
Michael Kortum, Chief Information Officer

Also Present: Melissa Oppenheim, Facebook
Corey Owens, Facebook
Bill Ashworth, Yahoo!
Will Castleberry, AOL
Bradley Shear, Shear on Social Media Law
John Burchett, Google
Liam Farrell, *The Capital*
Jerrold Garson, Montgomery County Board of Elections
Eric Bryant on behalf of AOL
Kathleen Miller, Associated Press

DECLARATION OF QUORUM PRESENT

Vice Chairman Mack called the meeting to order at 2:35 pm and declared that a quorum was present.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the April 29, 2010, board meeting were presented for approval. Mr. McManus made a motion to approve the minutes, and Ms. McGuckian seconded the motion. The motion was approved unanimously.

ADMINISTRATOR'S REPORT

1. Announcements

Congratulations

Ms. Lamone reported that Mr. DeMarinis and his wife welcomed a new member to their family, Zoe Luca DeMarinis, who was born May 15, 2010, weighing 7 lbs. 10 oz.

Ruth Maynard of the Candidacy and Campaign Finance Division will graduate on June 27, 2010, with Masters Degree in Public Administration.

FY2011 Service Reduction Days and Furloughs

Governor O'Malley recently issued an executive order addressing service reduction days and furloughs for FY2011. Similar to FY2010, salary reductions and furlough days are salary dependent. The service reduction days (days when the State will be closed) are: September 3rd, November 24th, December 23rd, December 30th, and May 27th. To offset the salary reduction and furloughs, the Executive Order grants State employees with administrative leave in FY2012 equal to the number of furlough days in FY2011. SBE will need to seek a waiver (for both this office and the 20 local boards of elections that are under the State personnel system) from the September 3rd salary reduction day office closure requirement since that occurs during early voting. Ms. Lamone reported that the Department of Budget and Management is aware of the upcoming request.

2. **Meetings and Important Dates**

SBE Biennial/MAEO Annual Conference

On May 17th, SBE and the Maryland Association of Election Officials (MAEO) held a joint conference in Towson. SBE updated the conference attendees on early voting regulations and requirements, the Election Preparedness and Professional Development Program, upcoming local board audits in response to the legislative audit, updates on the upcoming mock election, voter outreach for early voting, and voter registration activities. In the afternoon, there were breakout sessions for election directors and staff that showcased some best practices, while board members and attorneys met to discuss provisional and absentee voting and canvassing procedures and Mr. Goldstein and Ms. Trella hosted a question and answer session.

At each SBE biennial meeting, an election official is selected as "Election Official of the Year." This year, this honor was given to the members of the Election Judges' Manual Committee for their tireless work on updating the manual and developing the supplement for early voting. The Committee members are Lenice Austin (Baltimore County), Cheemondia Blake (Kent County), Tracy Dickerson (Charles County), Abigail Goldman (Baltimore City), Maria Johnson (Baltimore City), Dale Livingston (Harford County), Kaye Robucci (Washington County), Rick Urps (SBE), and Rena Waggoner (Baltimore County).

U.S. Election Assistance Commission's (EAC) Board of Advisors

The Board of Advisors will be meeting in Washington, D.C. from June 16th – 18th. Ms. Lamone reported that she received the agenda the day before the board meeting.

Board of Public Works (BPW)

On June 9th, SBE will have two items on the BPW agenda. First, SBE is requesting approval of a \$1.3 million contract with Election Systems and Software, Inc (ES&S) for: (1) software license and hardware maintenance for voting system equipment; and (2) services, additional equipment, and supplies related to the voting system. Second, SBE is requesting approval of a three year contract for field support awarded to Expericon for ongoing user support for the local boards of elections for the statewide voter registration system (MDVOTERS). In addition to supporting users, this contract plays an important role in all aspects of testing new software releases.

3. **Election Reform & Management**

U.S. Election Assistance Commission: Board of Advisors and Standards Board

The EAC recently asked the Board of Advisors and Standards Board to review a draft *Recounts and Contests Study* and the Standards Board to review three draft chapters from the EAC's *Election Management Guidelines*. Comments on these documents were provided to the EAC, and the Board of Advisors will be providing comments on the draft chapters at its meeting next month in Washington, D.C.

Online Absentee Ballot Delivery System

Development of this enhancement to SBE's voter look-up website is near completion, and testing is scheduled for the week of June 7th. The testing will include the email notification the voter receives alerting him or her that that his or her ballot is available, whether the voter received the correct ballot style and other unique instructions, and whether the mailing label templates work in the US and other countries' postal systems. The system is tentatively scheduled for production in July with ballots for the primary election distributed via the system when ballots are available. In response to a question from Ms. Mack, Ms. Trella stated that family members of SBE employees will be overseas testers.

Election Judges' Manual

The 2010 election judges' manual and supplement for early voting have been distributed to the local boards of elections. The local boards are now in the process of reviewing the manual and supplement and inserting their county-specific customizations. When they have customized the manual and supplement, the revised documents will be sent to Mr. Urps for review and approval.

Election Preparedness and Professional Development (EPPD) Program

On Sunday, May 16th, William Varga of the Attorney General's Office, Robert Hahn, Executive Director of the State Ethics Commission, and Ms. Trella presented the Laws and Ethics course of the EPPD program to MAEO Conference attendees in Towson. A total of 110 LBE staff attended the class. In addition, a total of 49 local elections board members and attorneys attended the class. The class evaluations completed by the attendees were very positive.

To date, a total of 190 local board of elections' staff have attended at least one EPPD class. Thirteen directors, 12 deputy directors, and 95 staff have fulfilled the minimum program requirements for this election cycle. A copy of the summary of the EPPD Program (as of May 5th) was provided in the meeting folder.

Absentee Ballot Automation

Staff is working to develop a pilot project with several local boards of elections to out-source the process of mailing absentee ballots to voters. The process for mailing the ballots is cumbersome and labor intensive because it requires printing labels, selecting the correct ballot, inserting the ballot and instructions, and then applying postage and mailing the ballots. In several jurisdictions around the country, an automated process is employed that eliminates the staff resources, improves accuracy, and saves money by pre-sorting the mail to take advantage of better postage rates (often .50 to .60 cents per ballot savings). SBE's absentee ballot printer, Digital Ink, has the technical capabilities to do this process and is teaming up with a company from Colorado who has been conducting these services for several jurisdictions for the past few years. Montgomery County, Anne Arundel County, Baltimore County, Baltimore City, and Worcester County are the pilot counties.

4. **Voter Registration**

MDVOTERS Software

User acceptance testing (UAT) is currently being done on the final software release (2.29) prior to the election. Once UAT is completed, the voter registration staff, in conjunction with local board of elections' staff, will perform a mock election. It is anticipated that the software release will be put into production the weekend of June 25th. Several GoToMeetings will be scheduled to demonstrate the new functionalities of the new software version.

MVA Mailings

During the last week of April, approximately 25,000 letters were mailed. These letters were 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. The breakdown of responses to the mailing received as of May 27th is: 207 new voter registration applications; 1,518 address changes; 103 address and name changes; and 290 name changes.

Procurement

The Voter Registration Division is working with the Department of Information Technology's procurement team on two more solicitations: a CATS II Task Order for MDVOTERS software maintenance and a CATS II Task Order for operation of our two MDVOTERS data centers.

5. **Candidacy and Campaign Finance**

As of June 1st, 316 candidates have officially filed for the 2010 Gubernatorial Election.

Seminars

On May 12th, Mr. DeMarinis conducted a campaign finance compliance seminar at the Howard County Board of Elections. It was attended by 20 people. On May 26th, Ms. Maynard conducted campaign finance compliance seminar for candidates and potential candidates. It was attended by over 45 people.

Enforcement Actions

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

6. **Voting Systems**

Conducting the Election (CTE) Guide

The voting systems team has been continuing with the development of processes and procedures for the primary and general elections and especially early voting. These have been documented in the *Conducting the Election* (CTE) Guide, which is currently undergoing review by a group of local boards of elections. Their comments are expected back by the end of the week. Any changes will be made in time for the mock election later in June.

Database Programming

For the mock election, 24 election databases have been programmed. These are updated versions of the 2006 Primary Election databases to incorporate early voting as it will happen in 2010. This gives all those involved in the mock election very realistic data with which to work.

Staffing

The voting system team has also been working with Cirdan, the election support services vendor, as well as the local boards of elections to establish the number of temporary logic & accuracy (L&A) personnel required to supplement the local boards for that busy period, as well as the number of election field support that will be required through early voting and election day.

Mock Election

The Mock Election Project team continues to make progress toward the mock election scheduled for June 17th through 29th. One major task involves the development and publication of the Mock Election Procedures document, which provides the detailed process and procedures for both SBE and the local boards. Since the last report, the procedures document has been refined and updated based on the initial peer review by both SBE and a subset of local boards of elections. The draft document was distributed to all the election directors and deputy directors last week. The next major task will happen this week when all local boards will participate in one of four GoToMeeting sessions on Thursday, June 3rd and Friday, June 4th to answer any questions and provide for any final updates. After this review, the document will be finalized and published to SBE and local boards of elections.

At the same time, there are a number of logistics being addressed by SBE and the local boards, including setting up an SBE command center, local boards working to setup and use their actual early voting sites, updating and developing documentation and forms, and establishing a communication protocol throughout the exercise. All this effort will allow SBE and the local boards to meet the following success factors:

- Practice the tasks in those areas defined in the scope of this exercise at both the SBE and local board level which will result in a higher level of confidence.
- Identify and address any issues or concerns that may arise.
- Identify any process improvements that could be implemented in this and future election cycles.
- Establish a foundation for future mock elections.

Electronic Pollbook Early Voting Network

Ms. Lamone reported that early voting virtual private network (VPN) hardware was received on May 13th. The gateway appliances for all 46 early voting sites were configured at SBE, tested on the VPN, and distributed to the local boards of elections at the MAEO conference.

On May 26th, a system-wide VPN functional test was conducted with 46 remote nodes and a total of 90 electronic pollbooks connected to the EPIC server via the VPN. The test scripts included planned disruptions such as disconnecting the network cable from the electronic pollbook and disconnecting the power supply to the gateway appliances. Overall, the system performed well under a transaction load rate of 13,000 ballots per hour. This rate exceeds what Maryland is likely to experience during early voting in the 2010 elections.

As documented in previous testing as well as during the Montgomery Student Board member election and a Harford County municipal election, a small number of transactions were not posted to the server database. The ES&S software development team advises that they have fixed this problem in the next software release scheduled for delivery to SBE on June 4th. In response to a question from Ms. Mack, Mr. Goldstein reported that the VPN did not time out during the testing. In response to a question from Mr. McManus, Mr. Goldstein reported that no votes were lost when certain transactions were not posted to the server database. Mr. Goldstein explained that it was the voter's status that did not transfer to the central server.

SBE, in conjunction with all 24 local boards of elections, will perform a repeat of the May 26th VPN test with the new software, tentatively scheduled for June 15th. The new software release will also be tested during the mock election. Upgrade to the production version of the new software on all 6,200 electronic pollbooks statewide is planned to begin the week of July 5th.

7. Information Technology

Ms. Lamone reported that the Information Technology Division has recently completed the installation, set-up, configuration, and training on SBE's new firewall. She noted that the installation did not impact other operations.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported that a trial was held beginning on May 24, 2010, in *PPE Casino Resorts Maryland LLC v. Anne Arundel County Board of Supervisors of Elections*, a lawsuit challenging the local board's decision to certify a petition

seeking a referendum on a zoning measure that would enable slot machines at a location near the Arundel Mills Mall. This trial ended the day of the meeting, and a post-trial brief is due next Friday. A related lawsuit was filed May 6, 2010, challenging the petition on grounds of State preemption. This lawsuit was assigned to Judge Silkworth. Mr. Darsie reported that he and Assistant Attorney General Kathleen Wherthey are representing SBE in both matters.

Mr. Darsie also reported that, on May 29, 2010, Dominion Voting Systems, Inc. entered into an agreement with ES&S to acquire the primary assets of Premier Election Solutions, Inc., an ES&S subsidiary which it acquired last September in a transaction that triggered an antitrust investigation by the U.S. Department of Justice and several states, including the Antitrust Division of the Maryland Attorney General's Office. The acquisition of Premier by Dominion was pursuant to the terms of a proposed settlement agreement between the Department of Justice and ES&S to resolve the antitrust issues.

Lastly, Mr. Darsie reported that the Attorney General's Office has issued an advice letter on May 24th on whether former Governor Robert Ehrlich's weekly radio show on WBAL should be considered an in-kind contribution from the radio station to the Ehrlich campaign. In that letter, the Attorney General's Office concluded that SBE should treat the radio show as it does other candidate appearances in the media, unless there were indications that the radio station was not acting as a "press entity" in broadcasting the program. Ms. McGuckian inquired about the status of the two other requests for advice, and Mr. Darsie responded that it was likely that a draft would be ready for review next week, with the final letter distributed before the next meeting.

APPROVAL OF REGULATIONS

33.13.07 – Authority Line: Mr. Goldstein presented new regulations (33.13.07) for adoption. He stated that the purpose of the proposed regulations was not to regulate the use of social media. Instead, the purpose of the regulations is to make it easier for candidates and political committees by setting uniform standards for authority lines when using social media. Mr. Goldstein acknowledged the assistance of Mr. Shear, an attorney in private practice, for his assistance in drafting the regulations. The proposed regulations define for each type of social media what constitutes campaign materials and how to comply with the authority line requirements.

Mr. DeMarinis explained that candidates have been asking how SBE will regulate messages sent via social networking sites, and he provided an example of a social networking site where someone changes the name of the page from a page supporting a candidate to a page opposing the same candidate. Mr. DeMarinis stated that these proposed regulations provide the public with information to determine whether a message is an official communication from a candidate.

Mr. Goldstein explained that if the message limitation is too small, there must be a link to an official authority line, but if it is not possible to provide a link, the political committee must register with SBE. In response to a question from Ms. Mack about capturing website addresses, Mr. DeMarinis responded that email addresses are currently collected and SBE could collect website and other addresses.

Ms. Mack recognized three individuals attending the meeting and provided them with the opportunity to speak on the proposed regulations. Mr. Owens of Facebook thanked the Candidacy and Campaign Finance Division for its efforts to make sure that strong disclosure statements are medium appropriate, expressed his support for the proposed regulations, and recognized that Maryland might be leading the nation in this effort. Mr. Castleberry of AOL expressed the need for clear and consistent guidelines and stated that the proposed regulations do this. Mr. Burchett of Google agreed with the prior statements. In response to a question from Mr. McManus about the level of burden imposed on their account holders, all three individuals responded that the proposed regulations are not burdensome. Mr. Shear commended Mr. Goldstein and Mr. DeMarinis on their efforts and the goal of the regulations to comply with the authority requirements without implicating the 1st Amendment.

Ms. McGuckian made a motion to adopt the proposed regulations in 33.13.07, and Mr. McManus seconded the motion. The motion passed unanimously.

33.01.06 – Candidate Names: Mr. Goldstein explained that these proposed regulations clarify the Board's policy on acceptable limits to alternative names and requirements for the affidavits of alternative name. The proposed regulations specify that a candidate's affidavit for an alternative name based on press accounts must be accompanied by copies of press accounts, while an affidavit based on "every day encounters" must be supported by two witnesses certifying to the alternate name. A candidate seeking an alternative name that is simply a shortened version or commonly used version of a name is exempt from the affidavit requirement.

The proposed regulations provide that the candidate's name must include a first name or initial, given last name, and the name may not include a title, a description of an activity, event, or experience, a reference to a business or commercial enterprise, or an offensive or derogatory word or phrase. There are two exceptions to the requirement

that a candidate use his or her given last name. Mr. Goldstein noted that the proposed regulation also requires that the nickname, phrase or name other than a shortened version or common used variation of the candidate's given name will be placed in the middle name field and may not exceed the character length established by the State Administrator.

In response to a comment by Ms. McGuckian, Mr. Darsie proposed alternative language to 33.01.06.04B(1)(a). With this language, B(1)(a) is proposed as: Is legally entitled to use a last name other than the candidate's given last name. Ms. McGuckian made a motion to adopt the proposed regulations in 33.01.06 as amended, and Mr. McManus seconded the motion. The motion passed unanimously.

33.13.06 – Campaign Accounts: Mr. Goldstein explained that the proposed regulations require political committees to establish a campaign account promptly after filing a *Statement of Organization*, the account must be a checking account registered in a manner that identifies it as the account of a political committee, and designate the committee's officers as having access. Other accounts are permissible as long as they are insured by the Federal Deposit Insurance Corporation and the funds are accessible at all times without penalty. The proposed regulations also provide that the permissible methods of disbursement of funds are order checks or counter checks, define other permissible disbursements and who may make those disbursements, and establishes prohibitions on the use of a personal account and investing in certificates of deposit, commercial paper, or stocks, bonds, or other investments accounts. Mr. DeMarinis explained that the proposed regulations are based on information previously included in the *Summary Guide* and previously answered questions about campaign accounts. Mr. Darsie commented that some of the requirements for campaign accounts are based on prior Attorney General's advice that may no longer be applicable. For example, the prohibition against using certificates of deposit was based primarily on the fact that they charged a penalty for early withdrawal of the funds. However, Mr. Darsie stated that it is now possible to negotiate a certificate of deposit with no early withdrawal penalty. Mr. Darsie felt that obtaining public comment on such issues would be beneficial.

In response to a question from Mr. McManus, Mr. DeMarinis stated that State law does not permit the use of debit cards. Mr. Garson questioned whether bank service charges are legal disbursements, and Ms. Lamone responded that they are not prohibited. There was a discussion about whether these proposed regulations needed to be adopted also as emergency regulations, to which the members expressed concern that they could be adopted without comment from the political committees.

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

In response to a question from Mr. McManus about the retention requirements for authority lines on social media websites, Mr. DeMarinis responded that political committees are required to keep a copy of the page.

Ms. McGuckian made a motion to adopt the proposed changes to 33.01.06 and 33.13.07 as emergency changes, and Mr. McManus seconded the motion. The motion passed unanimously.

Ms. Trella presented for final adoption changes to two chapters in Subtitle 17 (Early Voting) – 33.17.04 (Election Equipment and Materials) and 33.17.05 (Election Judges). The proposed changes were published in the April 9th edition of the *Maryland Register*, and no public comments were received. Mr. McManus made a motion to adopt the proposed changes as final, and Mr. Thomann seconded the motion. The motion passed unanimously.

APPROVAL OF REVISED LICENSED NURSING HOMES & ASSISTED LIVING FACILITIES: ABSENTEE BALLOT AND VOTER REGISTRATION PROCEDURES

Ms. Trella presented a revised manual for approval and explained that the proposed changes generally related to legislative and regulatory changes and incorporated some procedural changes. In response to questions from Ms. Mack, Ms. Trella explained that the requirement to scan an envelope means that the local board of elections scans the image of the envelope into the voter registration record and attaches the image to the appropriate voter's record and the process when a local board of elections receives notice of a voter's death from a non-family member.

Mr. McManus made a motion to approve the revised manual, and Mr. Thomann seconded the motion. The motion was unanimous.

APPROVAL OF PROPOSED SBE POLICIES

Mr. Goldstein presented a proposed policy addressing how complaints received by SBE will be handled. The proposed policy requires that staff log a complaint when it is received and, within 30 days, conduct an initial review to determine whether the complaint presents an issue within SBE's jurisdiction. If the complaint does, SBE is required,

within 60 days of receipt of the complaint, to respond to the complainant that the complaint lacks merit and no further action will be taken, notify the State Prosecutor or appropriate State's Attorney of the complaint, the existence of a possible violation, and any agreed action being taken by the subject of the complaint to address the issue, or refer the complaint to the State Prosecutor or appropriate State's Attorney for possible enforcement action. Mr. Goldstein reported that the policy requires staff to provide the complainant with a copy of any notification or referral and explained that the policy only applies to written complaints received from identified individuals and does not alter the administrative complaint process or limit SBE's ability to initiate an inquiry or make referrals based on a telephone or anonymous complaint. In response to questions, Mr. Goldstein stated that the policy would be posted to the website and that the policy gives SBE flexibility to respond to complaints.

Ms. McGuckian made a motion to adopt the proposed policy, and Mr. McManus seconded the motion. The motion passed unanimously.

Ms. Trella explained that a second proposed policy resulted from a complaint that election judges previously requested the removal of lawn signs from private property within the 100 foot no electioneering zone. The proposed policy requires the local boards of elections to give preference to a facility where private property is not within 100 feet of the entrance and exit closest to where voting occurs but if an alternate site is not available, to consider certain factors when establishing the boundaries of the no electioneering zone. The factors are any physical barriers or clear separation from the early voting center or polling place, the form of speech involved and its disruptive effect, and the location and accessibility of approaches to the early voting center or polling place. If a local board of elections has a voting facility within 100 feet of the entrance or exit, the proposed policy requires that the local board provide election judges with a diagram showing the boundaries of the zone and where the signs delineating the zone should be posted and give the individuals conducting the evaluation program the diagram. If a local board includes private property in the no electioneering zone, the local board must instruct the election judges to contact the local board immediately if, during voting hours, there are electioneering activities on the private property, submit to the State Administrator a copy of the diagram, and consider contacting an individual who owns property within the zone and request his or her consent to include the property within the zone.

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

ADMINISTRATIVE CLOSURE OF CAMPAIGN FINANCE ENTITY

Mr. DeMarinis provided the board members with the status of the Independent Party. Specifically, Mr. DeMarinis reported that there are no officers or executive committee, the only contact does not want to take an officer position, and the party has been referred to the State Prosecutor who has declined to pursue because the former chairman is now in Iowa.

Ms. McGuckian made a motion to administratively close the Independent Party, and Mr. McManus seconded the motion. The motion passed unanimously.

OLD BUSINESS

Ms. McGuckian inquired as to whether the State Prosecutor had responded to the letter requesting reconsideration of the individuals who were referred for possibly voting more than once in the 2008 General Election, to which Ms. Lamone reported that no response had been received.

Ms. Mack inquired about the scheduling of meetings where the public can provide comment on election-related topics, and Mr. Goldstein responded that one will be scheduled at SBE in late June or July.

NEW BUSINESS

In response to the board's administrative closure of the Independent Party and recent legislation, Ms. Wagner presented a revised voter registration application for approval. Ms. Wagner explained the proposed changes to the application, and the changes included language showing that 16 year olds are permitted to register to vote but not vote until they will be 18 by the next general election, specifying that a court must find an individual to be incapable of voting by reason of mental disability to be ineligible to vote, removing the Independent Party as a recognized political party, and altering the parenthetical comment after "Unaffiliated."

Mr. McManus made a motion to approve the revised voter registration application, and Mr. Thomann seconded the motion. The motion passed unanimously.

SCHEDULING OF NEXT MEETING

The next meeting was scheduled for August 5, 2010, at 2:30 pm.

CLOSED MEETING

Ms. Mack asked for a motion to close the board meeting under State Government Article, §10-508(a)(13) to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosure about a particular proceeding or matter. During the closed meeting, Ms. Mack noted that the draft Legislative Auditor's report will be discussed prior to its release as a public record under State Government Article, §2-1224. Mr. McManus made a motion to close the meeting, and Mr. Thomann seconded the motion. The motion passed unanimously.

ADJOURNMENT

Ms. Mack adjourned the public meeting at 4:30 pm.