

State of Maryland 

State Board of Elections Meeting – September 27, 2012

Attendees: Bobbie Mack, Chair
David McManus, Member
Chuck Thomann, Member
Patrick Murray, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeffrey Darsie, Assistant Attorney General
Donna Duncan, Election Management Director
Nikki Charlson, Election Reform Manager
Paul Aumayr, Director, Voting Systems
Keith Ross, Assistant Deputy for Project Management
Mary Wagner, Voter Registration Director
Victorica Smith, Campaign Finance
Michelle Holland, Chief Financial Officer

Also Present: Robert Walker
Barbara Sanders, League of Women Voters of Maryland
Mary Ann Keefe, Montgomery County Board of Elections
Mary Kiraly, Montgomery County
Holly Joseph, Montgomery County
Lynn Garland, Montgomery County
J.H. Snider, iSolon.org

DECLARATION OF QUORUM PRESENT

Vice-Chairman Mack called the meeting to order at 2:00 pm and declared that a quorum was present.

Robert Walker introduced Patrick Murray, who was recently appointed to serve as a member of the Board. Mr. Murray is the director of State affairs at Johns Hopkins University. Prior to that position, Mr. Murray served for six years in various positions with General Assembly leadership offices. With this appointment, Mr. Walker stated that his five and half year tenure with the Board has come to an end. He thanked the Board for their support and collaboration.

Bobbie Mack thanked Mr. Walker for his service to the Board and his 18 month extension while a replacement member was sought. Ms. Mack presented Mr. Walker with a plaque acknowledging his service and commitment to the State Board of Elections and the voters of Maryland.

ELECTION OF OFFICERS

Ms. Mack noted that the Board needed to select new officers and asked for nominations. Mr. Thomann nominated Bobbie Mack to serve as Chairman of the Board and for David McManus to serve as Vice Chairman of the Board. The nominations were unanimously approved.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the August 23, 2012, board meeting were presented for approval. The minutes were approved unanimously.

ADMINISTRATOR'S REPORT

Ross Goldstein presented the Administrator's Report.

1. Meetings and Important Dates

Staff provided an orientation program for Kevin Keene, the recently appointed Harford County Election Director. While Mr. Keene is familiar with elections as a former board attorney and board member, the orientation was designed to familiarize him with the specific requirements of the LBE Audit and ensure that he understood the areas that SBE will be reviewing after each election. Ross Goldstein and Paul Aumayr provided an overview of the voting system requirements; including logic and accuracy testing, post election maintenance, post election audit and verification, and general security protocols. Nikki Charlson and Rick Urps provided an overview of the requirements for canvassing minutes and related documentation, the polling place evaluation program, and election judge training. Finally, Mary Wagner

and Janet Smith provided an overview of the voter registration critical data oversight and list maintenance requirements. Each session was conducted in Harford County and included several members of the staff.

2. Election Reform & Management

Compliance with the Military and Overseas Voter Empowerment (MOVE) Act

Under the federal MOVE Act, election officials must transmit to certain military voters, their spouses and dependents and voters who reside outside of the United States ("UOCAVA voters") absentee ballots on or before the 45th day before an election. If a UOCAVA voter requested an absentee ballot prior to the 45th day before an election, election officials must transmit the ballot - by the means the voter requested - by the 45th day. Requests received from UOCAVA voters after this date must be processed as quickly as possible.

For the 2012 General Election, the 45th day before the election was Saturday, September 22, 2012. On Friday, September 21st, over 5,000 emails were sent to UOCAVA voters who requested electronic absentee ballots. On Friday, September 21st and Saturday, September 22nd, Runbeck Election Services, SBE's vendor for preparing and mailing absentee ballot packets, mailed over 2,400 absentee ballots to UOCAVA voters. There were a handful of requests received on September 20th and September 21st, and ballots for those requests were either emailed on September 24th or mailed no later than September 25th. This information was provided to the U.S. Department of Justice.

Voter Services Website

All four components of the voter services website - voter look-up, polling place locator, online voter registration, and the online ballot delivery system - are now live and available and being used. On September 21st, the last component to be activated - the online ballot delivery system - went live for over 5,000 military voters, their spouses and dependents, and voters who reside outside of the United States. These voters requested an electronic absentee ballot and can use either the online ballot marking wizard to make their selections and print a ballot with their selections or download and print a blank ballot and vote the ballot by hand.

Ms. Mack asked about an email the Board received from Rebecca Wilson of SaveOurVotes.org and several computer scientists regarding alleged vulnerabilities to the online voter registration system. Specifically, Ms. Wilson contends that since there are websites that can calculate a driver's license number based on the individual's name and date of birth, a bad actor could utilize the system to create or change numerous voter registrations. In response, Mr. Goldstein noted that staff has looked at the report and are taking it very seriously. From the initial analysis of the report, it appears that the existing procedures and practices already address many of the concerns raised. Staff will continue to review the document for opportunities to make improvements where necessary and appropriate.

Mr. Goldstein also noted the following facts about the system:

1. Each voter registration transaction is individually reviewed by an LBE staff member – using the online system does not connect to or automatically update the voter registration database
2. A staff member reviews usage patterns on a daily basis and would be able to detect an attack or attempt to change or create thousands of voter registrations
3. The firewall detected multiple attempts from the same range of IP addresses and performed as expected
4. Staff has not seen any evidence of fraudulent activity to date
5. CAPTCHA is a program that displays an image of a word that a user must accurately type and submit. CAPTCHA was mentioned by the computer scientists as a way to thwart an automated attack on the website. This option was reviewed by staff but it was determined that it would make the sight inaccessible to voters with disabilities. Staff is continuing to explore other options.
6. Staff will continue to engage and work with a security consultant.

Ms. Lamone stated that there is always tension between security and accessibility. In this instance, some of the proposed security measures might be effective, but they also might limit the usability for voters with disabilities.

Mr. McManus stressed the importance of continuing to work with the security consultant to make sure the concerns raised by the Ms. Wilson and the computer scientists are adequately addressed.

On Friday, September 21st, we sent over 5,000 emails to these voters telling them how to access their absentee ballots. Voters immediately started using the online ballot delivery system, and to date, the

most common issue is voters who reside outside of the United States forgetting their Maryland zip code and getting locked out of the system because they have tried to access it too many times. A few hours after we went live, we discovered an issue with two ballot questions in Howard County and one ballot question in Montgomery County. The ovals printed by the wizard were not correctly aligned with the oval on the printed ballot. The scope of the issue was quickly identified and the correction was implemented shortly thereafter. We contacted the 26 Howard and Montgomery County voters who used the wizard to access their ballots and asked them to re-access the website and make their selections again.

Printing of Absentee and Provisional Ballots

SBE's two vendors for printing ballots - Single Point and ES&S - are busy printing ballots for the local boards of elections. These ballots will be used for provisional voting and absentee voting at nursing homes, walk-in requests for absentee voting, and any manual ballot duplication required at the canvasses. The estimated delivery date is September 28th.

Election Judges' Training Observation

Rick Urps has observed three election judges' training classes for the 2012 General Election. To date, he has attended trainings for election judges in Baltimore City, St. Mary's County, and Howard County. All of the trainings have been sufficient, and he has provided feedback (where needed) to the local boards conducting these trainings. Rick will be observing trainings in Anne Arundel, Calvert, Caroline, Dorchester, Garrett, and Kent Counties before the election. These visits are also part of SBE's post-election LBE audit and will be referenced in the audit reports after the general election.

3. Voter Registration

MDVOTERS Data Entry

Staff at SBE is currently processing Prince George's County voter registration applications. It is expected as the voter registration deadline approaches, more jurisdictions will request that we process their applications as well.

Online Voter Registration

As of Monday, September 24, 2012, 11,198 individuals have registered to vote and 19,050 have made changes to their voter registration record.

ERIC

Approximately 1 million postcards will be mailed to individuals who have been identified as being eligible to register, but are not yet registered. The postcard directs the applicant to use the online voter registration system.

Ms. Mack asked how much this mailing was costing the State. Mary Wagner stated that production and postage would be \$170,000. Ms. Mack stated that this was a very good voter outreach effort.

4. Candidacy and Campaign Finance

Commission to Study Campaign Finance Laws:

The Commission held meetings on September 18th and September 27th to discuss enforcement, slates, LLC reform, public financing, independent expenditures, small dollar contribution disclosure, and additional reporting. The Commission will meet again to finalize areas of consensus and will publish its report by the end of the year.

Enforcement

The Candidacy and Campaign Finance Division notified the State Ethics Commission of late filings by the following entities regarding the semi-annual Contribution Disclosure Form:

- PPE Casino Resorts Maryland, LLC which failed to file 7 timely reports to the State Board of Elections dating back to February 1, 2009
- Ocean Enterprise 589 LLC which failed to file timely 3 reports due to the State Board of Elections dating back to February 5, 2010.

Procurements

Jared DeMarinis is working with Whitney Faust to develop a TORFP under the CATS II contract for the support and maintenance of the Election Management System (EMS) and for assistance to begin incorporating portions of that system into MDVOTERS. Plans include eventually maintaining other portions of that system in-house.

Filings

SB1 of the 2nd Special Session required additional reporting by a ballot issue committee and persons engaging in independent expenditure or electioneering communications supporting or opposing the gaming referendum. These entities are required to report within 48 hours of receiving contributions of \$10,000 or more by a single person or making aggregate expenditures of \$10,000 or more. The fine for failure to report is \$1,000 per day or 10% of the expenditure or contribution. The 48 hour reporting period started with the enactment of the bill and will continue until November 9, 2012. SBE has received 13 filings as of September 21. All are posted on the SBE website for public viewing.

5. Voting Systems

Pre-Election Preparation

The Voting System Division has ordered election supplies and materials for the November election, and the majority of those have been delivered – this includes items such as Touchscreen and Electronic Pollbook printer paper rolls, tamper tape, additional voter access cards. In addition, a small amount of voting units has been transferred between LBEs, to reflect their needs. Staff has also completed the process of changing the encryption keys to the voting system, which is done prior to every election.

Ballot programming was completed, and Logic & Accuracy testing has begun in a number of LBEs, including Baltimore City, Anne Arundel County and Harford County, and will continue statewide throughout October. LBEs are being assisted by the temporary County Technicians that start eight weeks before Election Day and stay until two weeks after the election. Each LBE has a County Technician.

Electronic Pollbooks.

The local boards of elections have completed the software upgrade on all 6,500 of their pollbooks.

Staff has been engaged in ongoing work on evaluating the signal strength and quality for the early voting centers. SBE has worked to improve signal quality where necessary, and has been utilizing 4g communication where appropriate.

Election Night Results

SBE has made some changes over the summer, including migration to a new server, for election results reporting. The Election Night Results website has been completed and is presently undergoing testing, using test results exported from the LBEs.

6. Project Management (PM) and Information Technology (IT)

SBE General Election Helpdesk

Mr. Ross is continuing to plan and conduct other tasks associated with the implementation and use of a new SBE helpdesk system (Election Ally) for the General Election. This system will be used by SBE staff to manage issues during early voting and on election day. During this past month, several members of staff successfully conducted testing of the Election Ally cloud based system. We worked with the vendor (Dynamic Path) to resolve the issues found.

General Election Call Center Support

Plans for using the call center for the election are continuing on schedule. In the past couple of weeks staff held the kickoff meeting with the vendor (CR Dynamics) and the local boards being supported (Anne Arundel, Baltimore City, Baltimore County, Harford, and Prince George's). Staff is continuing to update the needed documentation for the call center to include a contact list, escalation requirements, statement of work, and other material. The call center support is scheduled to begin on October 1 for SBE only and on October 8 for the five local boards. Support will continue until the day after election day, Wednesday, November 7th.

Contract Compliance Reviews

Mr. Ross has implemented an internal review process for time and material and deliverable contracts. Reviews include making sure that, when applicable, time sheets are being received and are correct and that the timesheets match what SBE is being invoiced. In addition, Mr. Ross reviews deliverable based contracts to make sure that what was to be delivered did happen as expected based on the contract agreement. If necessary, the SBE Contract Manager is responsible for making any necessary corrective action identified by Mr. Ross.

New Optical Scan Voting System Planning

Several staff members are currently working on some of the preliminary tasks and coordination needed for the scheduled implementation of the new optical scan voting system in 2016. Recent efforts in the past few weeks included working with the Department of Information Technology (DoIT) to define the high-level timeline for the project in addition to discussing options for managing the project. There will be further high-level discussions held during an upcoming scheduled meeting with SBE, DoIT, and SBE's budget analyst at the Department of Budget and Management.

2012 Annual Physical Inventory

SBE completed the milestone of baselining SBE's inventory based on the 2012 physical inventory performed here at SBE and at all the local boards. As a result, SBE was able to timely submit the required two annual reports (Annual Report of Fixed Assets and Annual Report of State Property – Materials & Supplies) to the Department of General Service. We will continue to work with the local boards, as needed, to resolve any outstanding issues or questions as it pertains to the status of inventory items.

Emergency Generator

An emergency standby generator has been rented for the upcoming Presidential General Elections in the rare occurrence of a power outage at SBE. The emergency standby generator will be delivered, installed and tested on October 25, 2012. Within seconds of a power outage, an automatic transfer switch senses the power loss and commands the standby generator to start and then transfers the electrical load to the generator. The emergency standby generator will be returned on November 19, 2012.

Test of the Call Center

In preparation for the forth coming Presidential General Elections, SBE and 5 of the LBEs will be having phone calls to the main office telephone numbers redirected to the Call Center. Tests have been scheduled to take place on 9/26/2012 for SBE and 10/3/2012 for the 5 LBE's. If the dry run tests are successful, SBE will be switched over to the call center on 10/1/2012 and the 5 LBE's will be switched over on 10/8/2012. They will all be switched back to normal on 11/7/2012.

Firewall Upgrade

SBE makes use of Cisco Firewall appliances to protect the internal computer network. These devices make use of a core operating system called the Cisco Adaptive Security Appliance (ASA) software. This software integrates with other security technologies to deliver comprehensive solutions that meet ever changing security needs. In order to comply with certain DoIT security policies, the ASA software on the firewall devices were recently upgraded to the most recent stable version of the software.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported that the sponsors of the referendum petition to refer the Congressional Districting Plan to the voters for the 2012 General election filed a lawsuit on August 29th challenging the ballot language for Question #5 that had been prepared by the Secretary of State and certified to the State Board. *Parrott v. McDonough*, Civ. No. 02-C-12-172298 (Cir. Ct., Anne Arundel Co., Md.). Plaintiffs alleged that the certified language, which includes no description of the new districts, did not adequately apprise voters of the true nature of the Congressional Districting Plan. On September 6, after a hearing earlier that day, Judge Silkworth issued a written opinion granting summary judgment to the State defendants and upholding the certified ballot language. Plaintiffs immediately noted an appeal and petitioned for certiorari to the Court of Appeals. On September 7th, Defendants filed an answer opposing the certiorari petition, which the Court of Appeals denied later that day, effectively ending the litigation. Deputy Solicitor General William Brockman and Assistant Attorney General Julia Bernhardt were the attorneys principally responsible for defending the State Defendants, including SBE.

Mr. Darsie also reported that a hearing before the Special Master, Judge Wilner, was held September 5th on the consolidated challenges to the State legislative districting plan. The Report of the Special Master was submitted to the Court of Appeals on September 20th, *In re 2012 Legislative Districting of the State*, Misc. Nos. 1, 2, 3, 4, 5, 9 (September Term 2012). Two of the five petitions (4 and 9) had previously been dismissed, leaving numbers 2, 3, and 5 for consideration on the merits, including various state and federal constitutional objections to the State's plan. The Special Master recommended denial of all three petitions. Exceptions to the Report are due October 1, 2012.

Mr. Darsie stated that the Court of Appeals on September 25, 2012 issued its written opinion in *Doe, et al. v. Maryland State Board of Elections*, No. 131 (September Term, 2011), a case involving the referability of the Maryland Dream Act. On June 13th the Court affirmed by *per curiam* order the Circuit Court's decision that the

Dream Act does not make an appropriation and therefore was not excepted from referendum under § 2, Article XVI of the Maryland Constitution.

Finally, Mr. Darsie reported that on August 23rd, the Circuit Court for Carroll County granted the State's motion to dismiss in *Fair v. Obama*, Civ. No. 06-C-12-060692-DJ (Cir. Ct., Carroll Co., Md.), a lawsuit challenging President Obama's candidacy for the 2012 Democratic Party primary and 2012 General Election on the grounds that he is not a "natural born citizen" as required by the Article II of the U.S. Constitution. Judge Stansfield's opinion dismissing the complaint rejected the various substantive arguments made by the plaintiffs regarding the President's eligibility, although the dismissal is also premised on *laches* (plaintiffs' undue delay in bringing their lawsuit) and the other contentions set forth in Defendants' motion to dismiss. Plaintiffs have noted an appeal to the Court of Special Appeals.

WAIVERS OF CAMPAIGN FINANCE LATE FEES

Victorica Smith presented a recommendation for approval of a waiver of late fees for the Baltimore County Fire Fighters PAC. A motion to approve the recommended waiver was made by Mr. Thomann and seconded by Mr. McManus. The motion was unanimously approved.

APPROVAL OF REGULATIONS

Ms. Charlson presented changes to COMAR 33.13.02.02 and 33.04.02.01 for final adoption. The changes establish guidelines for reporting contributor employer and occupation information and provide for the ability of a contributor to request that certain information be kept confidential, respectively. Mr. McManus made a motion to adopt the proposed changes, which was seconded by Mr. Thomann. The motion was unanimously approved.

Next, Mr. Goldstein presented the following changes to various regulations in Title 33 of COMAR for final adoption:

1. 33.08.01.10 (Post-Election Audit)
2. 33.08.05.01 - .04 (Reports and Accounting)
3. 33.10.02.38 (System Verification)
4. 33.10.11.38 (System Verification)
5. 33.08.05.01 - .07 (Post Election Verification and Audit)

Mr. Goldstein stated that during the public comment period, public comments were received from the following Lynn Garland of Montgomery County; Mary Kiraly of Montgomery County, and Jerrold Garson of Montgomery County. Mr. Goldstein noted that the complete comments were included in the folders. Mr. Goldstein summarized and responded to each public comment.

1. *Insufficient Ballot Accounting and Reconciliation.* Ms. Garland noted that the proposed regulations have eliminated the formalized ballot accounting procedures. She states that this type of ballot accounting is necessary for "catching uncounted ballots, double scanned ballots, and stuffed ballot boxes." She states that ballot accounting should be comprehensive to include all votes, not just in precinct votes and should track the number of physical ballots sent, returned, spoiled, voted, accepted, and rejected. Finally, she states that there needs to be a reconciliation of memory cards.

In response, I would argue that ballot accounting is not necessary to identify uncounted ballots or the introduction of unauthorized ballots. Instead, the required business processes and the audit that is performed are sufficient to address those concerns. It should be noted that paper ballots are only scanned in the local board office under the supervision of the bi-partisan canvassing board. Each ballot counted is directly correlated to a voter. This is checked in a variety of ways throughout the canvassing process. For example, each absentee voter receives a unique code. That code is on the return envelope and is scanned into the system upon return. Accordingly, only a ballot returned from a valid absentee voter is presented to the canvassing board (and this process is checked as part of the post election audit). Similarly, the canvassing process for provisional ballots assures that each provisional voter is associated with a registered voter and only those ballots are eligible for counting. Furthermore at the conclusion of each stage of the canvass, the canvassing boards are instructed to check the number of ballots counted against the number of ballots that were presented for canvassing.

Because SBE's business processes and audit procedures are able to associate a voter with every ballot cast, ballot accounting ultimately only accounts for the ballots that were not used. The decision to no longer include this process was done in consultation with local election officials after determining whether any security or accountability would be lost. Since no security or accountability concerns were identified, the process has been eliminated.

Accordingly, the post election audit and verification regulations are sufficient as proposed to provide meaningful assurance and confidence in the accuracy of the election. However, Mr. Goldstein recommended that this issue be revisited when the State begins to use optical scan voting in polling places.

2. *Unacceptable Audit Practice.* Ms. Garland, Mr. Garson, and Ms. Kiraly all commented on the fact that the precincts to be sampled for the audit and verification are selected during a public demonstration prior to the election. All of them state that the selection should be done after the election, immediately prior to the start of the audit and verification procedures. Mr. Garson notes that accounting procedures would normally not permit the person or entity being audited to know the sample in advance.

Mr. Goldstein noted his agreement with these observations and stated that he will propose a change to the regulations to require the selection of the audited precincts to occur on election day, prior to the start of the early voting results canvass. However, Mr. Goldstein suggested that the proposed regulations be adopted as final and an administrative policy to change the time of selection will be issued for this election. Mr. McManus stated that the selection should occur after the polls close.

3. *Additional Audit Practice Issues.* Ms. Garland also stated that the random selection process should be publicly observable, the results of the post election audit and verification should be public, and that the post election audit and verification should require escalation in the event that discrepancies are found.

Mr. Goldstein noted his agreement with these observations, but that they are already addressed. Currently, the selection of precincts is required to be done at the logic and accuracy public demonstration. Written notice of the public demonstration is provided to central committees and candidates unaffiliated with a political party. Finally, as a general rule, all documents created by this office or local boards are public documents that are available upon request.

Regarding escalation procedures, those are included in the proposed regulations. For the verification, where any discrepancy is not tolerable, the escalation procedure states that the local board may not certify the election until the cause of the discrepancy is discovered, resolved, and the State Administrator has approved of the resolution. For the audit, the process already includes 100% of the precincts. Accordingly, escalation procedures are not required. However, the regulations do state that if a discrepancy occurs that cannot be explained and it is greater than the vote margin of any contest on the ballot in that precinct, the local board of canvassers may not certify the election until any corrective actions required by the State Administrator are completed.

4. *Definition of Precinct.* Ms. Kiraly, Mr. Garson, and Ms. Garland all commented on the definition of the term precinct (which includes an early voting center) and the fact that this would change how election results are reported.

The purpose of the definition of the term "precinct" in COMAR 33.08.01 was to clarify that any audit and verification requirement for a precinct would also apply to an early voting center. The placement of the definition in COMAR 33.08.01 makes the definition applicable to the entire subtitle instead of just the post election audit and verification section. Mr. Goldstein noted that this is potentially confusing and agreed that the location of the definition should be changed. However, Mr. Goldstein disagreed that as currently proposed the definition will change the election results reporting requirements – that was not the intention and there are no plans to change how results are reported. As a matter of clarification, it should be noted that absentee and early voting results are reported by county and not by precinct. There is no requirement to report absentee and early voting results by precinct and doing so is administratively very complicated and cumbersome. Early voting and absentee voter history is, however, reported by precinct, and thus far that has been sufficient data for political scientists and other interested parties to understand Maryland voting trends.

Mr. McManus and Ms. Mack expressed their appreciation for the comments received, noting that a lot of work was put in to them and that they were helpful. Mr. McManus made a motion to adopt as final the regulations with the understanding that staff would submit a non-substantive correction (inserting the omitted word "place"), provide an administrative directive to randomly select precincts after 8 p.m. on election day, and, at a future meeting, propose a change to the regulations to move the definition of the term "precinct." Mr. Thomann seconded the motion, which was unanimously approved.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Ms. Mack noted that the State Board of Elections Bylaws were included in the meeting folder. Since a new board has been constituted, the members will need to re-affirm the bylaws. Ms. Mack asked the members to review the bylaws for discussion and approval at the next meeting.

Rick Urps asked Mr. Murray to select a county from which a voting unit will be randomly selected for parallel testing on election day. Mr. Murray selected Cecil County.

SCHEDULING OF NEXT MEETING

The next meeting is scheduled for October 26th at 2:00p.m.

ADJOURNMENT

Ms. Mack adjourned the meeting at 3:35 pm.