

State of Maryland

State Board of Elections Meeting – March 29, 2012

Attendees: Robert Walker, Chair
Bobbie Mack, Vice Chair
Rachel McGuckian, Member
Chuck Thomann, Member
Linda H. Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeffrey Darsie, Assistant Attorney General
Donna Duncan, Election Management Director
Nikki Trella, Election Reform Director
Jared DeMarinis, Candidacy and Campaign Finance Director
Stacey Johnson, Project Manager, MDVOTERS
Paul Aumayr, Director, Voting Systems
Keith Ross, Assistant Deputy for Project Management

Also Present: Mary Kiraly, Montgomery County
Lynn Garland, Montgomery County
Barbara Sanders, League of Women Voters of Maryland
Holly Joseph, Montgomery County
Stan Boyd, Montgomery County

DECLARATION OF QUORUM PRESENT

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

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

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

ADMINISTRATOR'S REPORT

Ross Goldstein presented the Administrator's Report.

1. Announcements

SBE is pleased to welcome Kalaya Byrd, a new employee who is assigned to the Candidacy and Campaign Finance Division. She will be working part-time assisting the Division with its projects and filings. Currently, Kalaya is a college student at Bowie State working on her degree in Criminal Justice.

2. Meetings and Important Dates

Election Directors' Meeting

On March 13th, SBE hosted an election directors' meeting. Twenty-three local boards of elections participated in the conference call. At this meeting, there were discussions about tasks associated with the voter registration deadline, pre-election activities for the voting units and electronic pollbooks, legislation about the online absentee ballot delivery system, and upcoming inventory procedures. A summary of the meeting was provided in the board meeting folder. The next election directors' conference call is scheduled for Tuesday, April 17th.

Local Board Attorney Pre-Election Conference Calls

Before each election, SBE hosts a series of conference calls for the local boards' attorneys. To date, SBE hosted a conference call on February 29th and March 14th, and the final call was held on March 28th. During the conference calls, there were discussions about regulations, available SBE resources, the missing candidates from two congressional districts, revised petition procedures, and various election-related reminders. The conference calls have been well attended, with ten local boards represented on the first call and 17 local boards on the second call.

3. Election Reform & Management

Absentee Ballots

On March 6th, the local boards of elections began sending absentee ballots to domestic, civilian voters. The pilot project to automate the absentee ballot mailing process continues to run well. Montgomery, Anne Arundel and Kent Counties continue to use the services provided by Runbeck for the primary

election and now have access to Runbeck's customer portal that allows them to track the absentee ballots both at Runbeck during production and once the ballots enter the U.S. Postal Service system.

Congressional Districts 5 & 8 – Male Delegates to the Democratic National Convention

SBE learned that two candidates for Male Delegates to the Democratic National Convention were omitted from the ballot. One candidate was from the 5th Congressional District, and one candidate was from the 8th Congressional District. One of the candidates sued SBE, and SBE agreed to:

- Correct the affected ballots. This included re-creating the ballots for the voting units, paper ballots for absentee and provisional voting, electronic ballots for the online absentee ballot delivery system, audio ballots, and screen shots for specimen ballots.
- For Democratic voters in the affected districts who had already been sent an absentee ballot, SBE's mail house sent these voters the corrected ballot and an explanation as to why they were receiving a second ballot.
- The affected local boards cleared and re-prepared the voting units for early voting and election day.
- The affected local boards also updated their specimen ballots. For those local boards that had already mailed their specimen ballots, SBE designed a postcard for Democratic voters in the two congressional districts. The local boards will mail the postcards.
- SBE's ballot printers printed and shipped to the local boards the corrected ballots. These ballots will be used for provisional voters and absentee voters who requested an absentee ballot after the omission was found.

SBE distributed to the local boards procedures for storing, processing and canvassing ballots from Democratic voters in the 5th and 8th Congressional Districts.

Ms. Mack questioned how this error occurred. Mr. Goldstein stated that this year most candidates for Delegate to the Democratic National Convention filed as committed to Barak Obama. However, of those candidates only those selected by the Obama campaign remain on the ballot. The remaining candidates are removed. Candidate for Delegate to the Democratic National Convention who file as uncommitted to a presidential candidate automatically appear on the ballot. What happened with the missing 5th and 8th Congressional District candidate was that they were removed during the process to remove candidates who were committed to Obama, but not selected by the campaign to serve as delegates at the convention. Staff has identified a number of system and procedural changes that will ensure this issue does not happen again.

Online Absentee Ballot Delivery System – 2012 General Election Enhancements

SBE previously issued a request for resumes for a security consultant to assist with the design and development of the online ballot delivery system and the drafting of a Request for Proposal for a security audit and penetration testing. Stacey Johnson and Cheré Evans identified five qualified candidates and with Whitney Faust, conducted interviews. Stacey and Cheré are working on a Request for Proposals for an accessibility review of the website.

Election Judges' Training – Observations

During February and March, Rick Urps traveled around the state to observe election judges training. Rick visited Baltimore, Carroll, Cecil, Harford, Somerset, Talbot, Wicomico and Worcester Counties. Rick reports that the training classes he attended were generally well presented and effective. Rick will continue to work with the LBE staff to assess the training curriculum and to provide best practices information.

Polling Place Accessibility

Rick Urps continues to work with staff from the local boards of elections to identify opportunities to improve the access to the voting process for all voters. Federal accessibility grant funds are being used to purchase equipment such as handicapped parking signs and parking cones, intercom systems, and pathway lighting. Sign language interpreting services for training and election day are being purchased for elections judges who are deaf. SBE also purchased "Disability Etiquette" booklets to educate election judges on how to interact with voters with disabilities. Also, accessibility funds are being used to purchase, rent, or install wheelchair ramps at several locations.

4. Voter Registration

MVA Interface

The MVA interface has been very successful. The local boards were processing 2,500-3,000 records a day, prior to the voter registration closing (March 13th). Processing time for the majority of records is about 5 minutes per batch of 25 records. The feedback has been very positive from the local boards.

Precinct Register Generation

After the voter registration deadline and once all timely applications are entered into MDVOTERS, the voter registration staff extracts data for the electronic pollbooks. The process was very efficient and smooth, thanks in part to Andrew Johnson of the ePollbook team, who worked with the voter registration staff on this process that has improved in terms of time and quality of output. The LBEs were able to pick up the CF cards for their ePollbooks 24-48 hours sooner than in past elections.

ERIC – (Electronic Registration Information Center)

Stacey Johnson and Chere' Evans have been working with the ERIC technical committee to develop the methods of data transfer as well as the reports that will be generated. It is expected that ERIC will be up and running soon.

Audits of the Voter Registration System

The Agreed Upon Procedures Audits are ongoing on the voter registration system. This includes audits of access controls to the database as well as the physical access. They inspect business procedures, server and network security, background checks, backup procedures, system logs, and password requirements just to name a few. Reports will be completed by May 1, in advance of the legislative audit.

Petition Efforts

SBE provided Delegate Neil Parrott with advanced determinations of sufficiency for *HB 438 – Civil Marriage* and *SB1 – Congressional Districting Plan*. Advanced determination was also granted to Mr. Derek McCoy for HB 438 as well.

5. Candidacy and Campaign Finance

MD CRIS Trainings

Jared DeMarinis conducted four training classes on how to use MD CRIS. The classes on March 19, 20, and 21 were held online using WebEx. The March 22nd class was held in person at SBE. The Candidacy and Campaign Finance Division will be holding more user training sessions throughout the year.

Reporting

On March 23, 2012, the *2012 Presidential Pre-Primary Campaign Finance Report* was due for all political committees participating in that election. This is the first report that MD CRIS is the only available method to file a report. Any filings received after March 23rd are considered late and will be assessed late fees. The maximum late fee penalty is \$250.

6. Voting Systems

Electronic Pollbooks.

The local boards of elections have completed the upgrade of the software on all of their pollbooks. The LBEs have also completed the Logic and Accuracy testing of the pollbooks for the election, and the bulk update process was completed on Friday March 30th. This process updates the 4,937 election day pollbooks with the early voting data. 214 pollbooks have been used for early voting. Staff has been engaged in ongoing work on evaluating the signal strength and quality for the early voting centers. SBE has continued to work with Verizon to improve signal quality where necessary.

Pre-Election Preparation

Logic & Accuracy testing on the Accuvote-TS and Optical Scan units has been completed. Approximately 16,000 voting units were tested and prepared. Due to the last minute changes to the Congressional District 5 and 8 ballots, approximately 2000 units required a second Logic and Accuracy test. LBEs were assisted by the temporary County Technicians, and Cirdan L&A technicians.

Election Night Results

There has been further testing on the new election night unofficial results reporting process. This has been tested using Logic and Accuracy results. Staff has also been refining the election night procedures for both SBE and the LBEs. A Gotomeeting with the LBEs is scheduled for March 28th to ensure LBEs are prepared, and to answer any of their questions.

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

Program\Project Management Office

Keith Ross is continuing to work on the development and refinement of project management toolbox templates and other resources that are to be used by the agency. Mr. Ross also continued to work on the development and execution of the internal contract monitoring requirements.

Projects

Work continues on the Inventory Management Project. Staff is in the process of preparing for the 2012 physical inventories at both the local boards and at SBE. The inventories are expected to take place between April and June.

The 2012 Primary Election Call Center support is up and running. The Call Center is supporting SBE and four local boards (Anne Arundel, Baltimore City, Baltimore County, and Prince George's). Queen Anne's County was one local board being supported. They decided to pull out primarily due to the low number of calls, which made the call center logistically and financially infeasible. Staff is continuing to work through issues as they arise with the escalation of calls and other issues. Keith Ross is periodically listening in on the Call Center agent calls to make sure everything is being executed as expected.

Preparations are completed for the coordination of the SBE helpdesk and Command Center functions for Early Voting and Election Day.

Other

Staff completed the interviews for both the Voting System and Information Technology vacancies. There was a candidate selected for Voting Systems. No candidate was selected for the Information Technology position. As a result, the vacancy will have to be reposted for new candidates.

Emergency Generator

An emergency standby generator has been rented for the upcoming Presidential Primary Elections in the event of a power outage at SBE. The emergency standby generator has been delivered, installed and tested. 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.

Disaster Recovery Site Setup at Maryland State Archives

Kurt Snyder worked with the staff at Maryland State Archives to set up 4 client workstations that are images of a SBE workstation. In addition, an Oracle database server was also setup to host the Ballot and Electrack databases. Lastly a sealed GEMS server was relocated over to the disaster recovery site in preparedness for any emergencies on Election night. These workstations and servers can be used by staff to continue critical elections operations in the event that the office facility is inaccessible.

Backup Election Night Results Reporting

Tests on SBE's primary and backup election night results reporting systems were conducted in preparedness for the upcoming Presidential Primary Elections. This backup system will be running concurrently with SBE's primary Election night results reporting system. This time around, the Center of GIS at Towson University will be hosting the website that will be displaying the unofficial results during the Presidential Primary Election night. They have a more robust web hosting architecture than we have used in the past at SBE to better handle the load.

Retrieval of Old GEMS servers from the Local Board of Elections

Daniel O'Connell has visited 9 counties thus far to retrieve their old GEMS servers for appropriate disposal following the Department of General Services (DGS) disposal procedures and guidelines.

Other IT Related Events

The IT staff assisted several local boards of elections:

- Frederick County with resolving issues they had with printing from MDVoters to DYMO label printers.
- Ordered some equipment (workstation and monitor, Canon scanner and 2 DYMO label printers) for Worcester County.
- Assisted Wicomico County with adding a network printer back onto their Local Area Network.

Security Credentials

Janey Hegarty has created identification badges for temporary staff workers for the upcoming primary elections.

8. Legislation

The following are bills that have been introduced this year that are of particular interest:

SB 597 – Elections – Baltimore City – Election Dates – This bill changes the Baltimore City Mayoral Election from the year after the Governorial Election to the same year and to be held concurrently with the Presidential Primary and General Elections.

SB 1078 Election Law – Absentee Ballots – Internet or Facsimile Transmission – This bill does three things. First, the bill amends §9-306 to require a local board of elections to **mail** an absentee ballot to a voter unless the voter is a military or overseas voter or a voter with a disability, in which case the local board may send the ballot via the Internet. Second, the bill amends §9-308 to require the State Board of Elections (SBE) to provide an ballot marking tool. A ballot marking tool will allow the voter to mark the ballot on his or her own computer using an interface that is similar to voting on the touchscreen voting unit. Once the voter is done, the ballot is printed out with the voter’s selections. The voter must mail it back to the local board of elections. Section 9-308 is also amended to state that the online ballot marking tool is not subject to State voting system certification requirements unless certification is required by the U.S. Election Assistance Commission (currently the Commission has ruled that certification is not required for ballot marking tools). Finally, the bill amends §9-310 by creating an exception from the requirement to enclose a specially printed envelope with an absentee ballot. For electronically transmitted absentee ballots, the bill specifies that the local board is required provide the voter with an envelope template, the oath, and instructions for completing and mailing the ballot. As you know, SBE has received public input from a few individuals regarding the online absentee ballot delivery system and the planned implementation of a ballot marking tool within the online absentee ballot delivery system. This bill makes meaningful concessions to the critics of the system by significantly scaling back the use of the online absentee ballot delivery system.

HB 694/SB 763- Election Law- Payroll Deductions and Member Contributions- Address of Contributor- This bill requires an employer that collects voluntary political contributions through payroll deduction to transfer the address in addition to other information required by statute of each contributor to the treasurer of the political committee receiving the contribution. Currently, only the name, date, and amount are forwarded to the treasurer.

HB 791/SB 1011- Election Law- Declaration of Intent- Establishment of Campaign finance Entity- This bill requires candidates that file a Declaration of Intent to have established or cause to be established at the time of filing an authorized candidate campaign committee. Currently, the establishment of the political committee is required prior to or at the time of filing a Certificate of Candidacy.

HB 1007/SB 919- Election Law- Campaign Finance Entities- Retention of Records- This bill limits the length of time that a political committee has to retain its account books and associated records to the earlier of 10 years after the creation of an account book entry or related record or 2 years after the political committee files a final report. Currently, a political committee has to keep every record from its establishment until 2 years after it files its final report.

HB 1103/SB 918- Election Law- Campaign Contributors- Occupation and Employer- This bill requires that the treasurer report the employer and occupation information of every contributor making contributions in the amount of \$500 or more in the aggregate in the election cycle to a single political committee.

HB 1275/SB 982- Election Law – Petition Fund Reports- Available Online- This bill requires that State Board post online the petition fund reports filed.

HB 1285/SB 1033- Election Law- Campaign Finance – Requirements- This bill requires that the responsible officers keep their contact information current with the State Board 21 days prior to a campaign finance report. It also allows the responsible officers the option to receive notices by email instead of by first class mail from SBE. Finally, the bill requires campaign contribution receipts be issued within 60 days of receiving the contributions.

ASSISTANT ATTORNEY GENERAL’S REPORT

Mr. Darsie reported on the following:

1. The U.S. Fourth Circuit Court of Appeals placed *Gorrell v. O’Malley* on its informal docket in response to the plaintiff’s February 22nd appeal. The plaintiff is challenging the redistricting plan based on the argument that the plan dilutes the voting strength of voters in rural-agricultural areas.
2. *Doe v. Maryland State Board of Elections* (DREAM Act referendum case), has been appealed to the Court of Appeals on the issue of whether the DREAM Act makes an appropriation and is therefore excepted from referendum. The State is asking for an accelerated briefing schedule so that the case can be decided before SBE’s statutory deadline to certify ballot questions (August 2012).

3. *Fletcher v. Lamone* – Plaintiffs have filed what is essentially an appeal as of right to the U.S. Supreme Court with respect to the lower court decision upholding the “No Representation Without Population Act.” Under that Act, the State’s Congressional redistricting plan reassigned 17,000 prisoners to the districts where they had lived before their incarceration, rather than the district in which their prison is located.

APPROVAL OF REGULATIONS

At the last meeting, Mr. McManus asked Mr. Darsie for legal advice on proposed regulations (COMAR 33.13.11.01 -.04) that would enable campaign contributions by text messaging or Common Short Codes (CSCs). Mr. Darsie presented the advice letter to the Board. The letter concludes that there is no preemption under federal law that would restrict SBE’s ability to establish regulations that would instruct campaign finance officers and the wireless industry on the requirements that must be met to permissibly utilize CSC electronic contributions. Mr. Darsie noted that the letter sent by industry representative *CTIA-The Wireless Association*, does point out practical concerns that may make compliance difficult for the wireless providers. Nonetheless, the regulations provide a target that the industry can choose to work towards if they want to support electronic contributions. Ms. Mack asked whether the regulations may cause treasurers to mistakenly believe that they can accept electronic contributions even though there may be procedural and technical limitations that make complying with the regulations not possible at this time. Mr. DeMarinis replied that committee treasurers already want to utilize electronic contributions so regulations are needed to establish the parameters for doing so and to give the industry a target. Further, SBE’s compliance materials will clarify the current limitations. Ms. McGuckian made a motion for final adoption of proposed regulations COMAR 33.13.11.01 -.04, which was seconded by Ms. Mack. The motion was unanimously approved.

Ms. Trella presented several proposed additions and changes.

- COMAR 33.07.07.01. & .02 – The proposed changes, recommended by staff at the Administrative, Executive and Legislative Review Committee of the General Assembly, correct a typo and clarify that if SBE or an LBE is a designating entity for challengers and watchers, the instruction manual they provide to the challenger or watcher is not subject to review.
- COMAR 33.08.04.02 and .05-.08. – The proposed additions establish a requirement for the canvassing board to manually verify each ballot that is duplicated using the barcode created by the ballot marking wizard. The regulations specify that if the team finds the ballot generated from the barcode matches the ballot returned by the voter, the voter verified ballot is tabulated. If the team finds that the ballots do not match, the team must manually duplicate a ballot using the ballot returned by the voter and immediately notify the State Administrator.

Ms. Mack made a motion to approve the proposed regulations, which was seconded by Mr. Thomann. The motion was unanimously approved.

WAIVERS OF CAMPAIGN FINANCE LATE FEES

Jared DeMarinis presented the State Administrator’s recommendations for waivers of campaign finance late fees for the following committees.

1. Caldwell, (Robert) for County Council
2. Caldwell, Van Citizens for
3. Educators for Progress in District 10
4. Glass, Glen Friends of
5. Hadfield, Jordan Friends of
6. Herbst, Jon for Baltimore County
7. Love, Dayvon Friends of
8. Norris, Linda Friends of
9. Smigiel, Mike Friends of
10. Van Rossum, Marcel J. for County Commissioner
11. Vote Frederick First PAC
12. Vricella, Rob Friends of

Mr. Thomann made a motion to approve the State Administrator’s recommendations, which was seconded by Ms. Mack. The motion passed unanimously.

PETITION FOR DECLARATORY RULING

A petition for a Declaratory Ruling was received from Mr. Kristin Aleshire. Mr. Aleshire was a candidate for the Washington County Council. Robocalls opposing his candidacy were made during the election. The robocalls had the authority line of the Washington County Republican Central Committee. However, the Central

Committee did not pay for or report an expenditure for the calls. Mr. Aleshire posed the following questions to the Board regarding this occurrence:

1. Is the robocall that was placed on October 31 and November 1, 2010 by Conquest Communication considered by the Board to be an expenditure and/or contribution?
2. If the campaign activity is deemed an expenditure and/or contribution, should it be reported on a campaign finance report?
3. If the intended recipient was not the Washington County Republican Central Committee and more than one individual participated in the procurement of the robocalls, should those participants have formed a political committee?
4. If the campaign material is not reported and invoice not submitted, what responsibilities does Conquest Communications have to report the expenditure and/or contribution?

Mr. DeMarinis made a recommendation that the Board should decline to issue a declaratory ruling. A declaratory ruling is for a petitioner to know how the Board would apply a regulation, order or a statute to the petitioner. However, this issue pertains to past actions and does not seek to clarify or establish the rights of the petitioner. Instead the petition seeks to address a past issue and establish the rights or obligations of entities who are not a party to the petition.

Mr. DeMarinis also noted that the issue has been investigated by the State Prosecutor. To date, no action has been taken by them. Ms. Mack noted that the State Prosecutor should not drop this issue as that would set a bad precedent. Ms. McGuckian made a motion to approve the recommendation not to issue a ruling, which was seconded by Ms. Macke. The motion was unanimously approved.

NEW BUSINESS

Mr. Goldstein presented the bylaws of the Anne Arundel County Board of Elections for approval. The bylaws are consistent with the State's model bylaws and do not make significant changes from the prior version submitted by Anne Arundel County. Ms. Mack made a motion to approve the Anne Arundel County Board of Elections Bylaws, which was seconded by Ms. McGuckian. The motion was unanimously approved.