

State of Maryland

State Board of Elections Meeting – May 23, 2013

Attendees: Bobbie Mack, Chair
David McManus, Vice Chair
Chuck Thomann, Member
Patrick Murray, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeffrey Darsie, Assistant Attorney General
Donna Duncan, Assistant Deputy for Election Policy
Keith Ross, Assistant Deputy for Project Management
Nikki Charlson, Director, Election Management & Reform
Mary Wagner, Director, Voter Registration
Jared DeMarinis, Director, Candidacy and Campaign Finance
Paul Aumayr, Director, Voting Systems

Also Present: Ralph Watkins, League of Women Voters of Maryland
Stan Boyd, Save Our Votes

DECLARATION OF QUORUM PRESENT

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

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

Per the new State Board policy, the minutes from the April 25th meeting were approved by the Chairman in advance of the meeting. There was no further discussion on the minutes.

ADMINISTRATOR'S REPORT

Ross Goldstein presented the Administrator's report.

1. Announcements

Welcome to Erin Perrone who has been hired to serve as the Financial Officer in the Finance & Budget Management Division. Erin brings a wealth of knowledge to SBE. Erin was the Voting System Manager at Anne Arundel County Board of Election for the past 4 years. She is very excited to be a part of the SBE team.

2. Meetings and Important Dates

Election Directors' Meeting

On May 9th, the monthly Election Directors' conference call was held. During this meeting, we discussed proposed changes to allow use of electronic devices in voting locations for specific purposes, refresher training sessions on processing of petitions, and voter registration applications. A summary of the conference call was provided in the board meeting folder. Because of the combined SBE/MAEO Conference in June, there will be no Election Directors' meeting next month.

Running Elections Efficiently

Ross Goldstein participated in a conference on *Running Elections Efficiently* hosted by Common Cause of New York. Mr. Goldstein was a presenter on two of the panels: early voting and online voter registration implementation. There were also panels on emergency preparedness, voter registration modernization, and disaster preparedness and polling place challenges.

3. Election Reform and Management

Voter Services Website

The first software release is scheduled for this month. This release will focus on security enhancements (including adding fields for the last four digits of the user's social security number and the date the user's driver's license or MVA ID card was issued) and changes to improve usability of the voter look-up, polling place locator, and OLVR. Chere' Evans is programming the software release, and various SBE staff members will test the software. The target release date is the 1st week of June.

Election Preparedness and Professional Development Certification

Nikki Charlson is offering a course on reconciling the various reports that identify voters with multiple voting credit. This course highlights the importance of the reconciliation process, explains how to work through the various reports and determine whether the voter voted more than once, and provides an opportunity for the local boards to share how they accomplish this during the short canvassing time.

This course is an optional course for the local boards, as the information may not be relevant to some local board staff members. The first class was held on May 15th at SBE, and over 20 local board representatives attended the class. The other classes were held on May 20th (Hagerstown) and May 22nd (Columbia). Over 50 local board representatives took the course.

2012 General Election LBE Audits

After each election, SBE conducts an audit of the local boards and provides each local board with a written audit report. The local board has the opportunity to respond to the audit report, and SBE prepares a final report based on the local board's response.

Audit reports were sent to the local boards in early April, and the local boards' responses were due at the end of April. SBE staff members are currently reviewing the responses and drafting final reports for each local board. We expect to send final reports by the end of May, and they will be available on request. Rick Urps coordinated this process, and various SBE staff members conducted the audit, reviewed the local boards' responses, and drafted the final reports.

4. **Voter Registration**

MDVOTERS - Site 2 (COOP)

On May 12th, SBE was notified that an attempted "Denial of Service Attack" occurred. The Sidus Group, the vendor that hosts and monitors the MDVOTERS database, immediately took the site down to stop the attack and allow for investigation. No users were impacted and the system was not compromised.

A Denial of Service Attack, if successful, utilizes all the resources of the system being attacked, which would prohibit users from accessing the database. Penetration of the voter registration database was not attempted.

The Sidus Group took the following actions:

- o Permanently restricted access to the system for the IP address from which the attack was initiated;
- o Modified firewall policies and checked the target server for infection, trojans, bots, and scripts; and
- o Performed other security checks.

Staff has submitted the Department of Information Technology's (DoIT) incident report that is required whenever an attempted breach of security occurs.

Mr. McManus asked whether the IP address gave any indication of who initiated the attack or from where. Mary Wagner stated that no such information was available.

ERIC

SBE has completed the review of the initial data matching reports. The reports include individuals registered in multiple states, in-state duplicates and social security death records. The information should prove valuable in performing list maintenance and improving data quality. The next data match is scheduled for the beginning of June with reports to follow. Once the reports are generated they will be forwarded to the local boards for processing.

Office of the State Prosecutor

As a result of the prosecution of Wendy Rosen, who was charged with voting in Maryland and Florida and the recent Washington Post article on Virginia's voting irregularities, Linda Lamone and staff met with Emmett Davitt, Maryland State Prosecutor. Mr. Davitt is interested in sharing data with Virginia to see if there are any cases of double voting between the two states. An ERIC report identified 5,783 individuals registered in both states. Of those registered, 133 had voting credit in the 2012 Primary Election and 331 in the General Election. We have reached out to the Virginia Board of Elections to further compare data.

5. **Candidacy and Campaign Finance**

Candidacy

As of May 22, 2013, 42 candidates have filed for the 2014 Gubernatorial Election.

Campaign Finance

The National Institute on Money in State Politics released a scorecard on the Essential Disclosure Requirements for Independent Expenditures and Electioneering Communications. Maryland received an "A" grade. 26 states received an "F".

On May 4, Erin Dennis conducted a training seminar for Emerge Maryland. She provided basic information on candidate filing, MD CRIS and campaign finance laws.

On May 21, Jared DeMarinis, along with Mike McDonough and Nicolle Norris of the State Prosecutor's office (OSP), met with clerks at the Anne Arundel District Court to discuss service of the civil citations and the collection of the late fees and fines. This meeting occurred because, under HB 1499, OSP and SBE will be issuing more civil citations than in the past. Additionally, SBE has been receiving payments from the Comptroller's Office regarding fines and late fees collected by the District Court from civil settlements initiated by OSP. However, the payments were lump totals collected and failed to have any information on the committees involved. The meeting resolved the issue of necessary information required with any payment received by the court. However, because service of citations is not limited to Anne Arundel County, having the clerk's office handle the service would not be the most effective method and other options are being discussed.

6. **Voting Systems**

Early Voting Sites

With the expansion of early voting, SBE has started assisting the local boards of elections in acquiring additional early voting centers. SBE has been using its Geographic Information System (GIS) software to verify that proposed early voting centers cover enough of the jurisdiction's registered voters. SBE will also be assisting the local boards in conducting site surveys for these proposed centers. There will be approximately 16 additional early voting centers in 2014.

Electronic Pollbooks

SBE has continued work on the software updates on the pollbook. Staff has been testing the changes that have been made by ES&S, and providing feedback. There will be more widespread testing for the final release, which will occur later on this year. This will include testing with the local boards.

Several staff members attended an electronic pollbook expo, hosted by the Fairfax County, VA, Office of Elections on May 17, 2013. The expo showed pollbook products from several vendors. The expo was very informative.

Power Management

SBE has been revisiting its power management plan for the voting system and pollbooks. The plan is designed to ensure that voting can continue in the event of a power outage in a polling place. It is anticipated that the updated plan will be released by the end of the year.

Municipal Elections

The voting system has been used at a number of small municipal elections over the past month, including Havre de Grace, Manchester and Hampstead. There have been no reported issues. SBE prepared the pollbook databases for these elections, and the regional managers were able to support them.

Havre de Grace carried out a pilot test, utilizing ballot-on-demand for the printing of provisional ballots. According to Paul Aumayr, there were only seven opportunities to test this functionality. Ballot-on-demand utilizes a printer to only print a ballot when needed. This saves money because, in comparison to pre-printing ballots, only the ballots that are needed are printed.

7. **Project Management and Information Technology**

New Voting System Project

SBE continues to work on the project planning phases scheduled for the remainder of FY13 and all of FY14. We completed the interview process for the 6 month contract Technical Writer resource. A candidate was selected and submitted to the DoIT for their final approvals. The expected start date for the contract resource is June 3rd.

Staff is also in the process of submitting to DoIT procurement the Request for Proposal (RFP) for the project management resource team. The expectation is that the needed resources will be onboard by the end of this calendar year.

The New Voting System Core Project team, comprising selected individuals from SBE and local boards, held its second meeting a couple of weeks ago. The team is covering a great deal of ground establishing the foundation for the New Voting System Replacement and Integrated Inventory Management System projects. For both projects this includes the team starting to formally document many of the detail requirements, working on the project cost estimates and building the project schedule.

Google Apps Migrations

The number local boards that have at least one Google App account continues to increase. As of this report, there are 18 local boards with at least one account. There are a number of opportunities for SBE and the local boards to work even more effectively using Google Apps, including collaboration and review of documents and spreadsheets, sharing of calendars, and eventually the addition of a new online library in Google Sites.

To assist the local boards to acclimate to the Google Apps environment, Keith Ross continues to conduct training. In the past month, GoToMeeting training sessions were held for Anne Arundel, Baltimore City, Baltimore County, Dorchester, Harford, Montgomery, and Prince George's. Mr. Ross is in the process of setting up additional training sessions with other local boards and their staff members.

Other

Mr. Ross is in the process of working on the last phase of 2012 General Election Lessons Learned. This is as a result of the work completed by teams of SBE and local board individuals to identify process improvements. There are several areas of the election process where process improvements were identified, including voting system, voter registration, petitions, voter services, canvassing, and ballot processing. The summary presentation will be made at the upcoming Biennial conference in June.

Mr. Ross and Vincent Omenka went back to Annapolis High to speak to the group of high school 9th graders as part of Anne Arundel's Signature Program. They shared more with the students about electoral issues, their positions, and encouraging the students in their education. Definitely, an impact was made and a relationship established for future program participants in the years to come.

Information Security Consultant

Interviews for a security consultant are still ongoing. Staff hopes to be through the interview process in the next two weeks. The plan is to have the security consultant review and improve security controls on systems and processes and provide assistance with refining and enhancing existing security documentation and plans.

Annual Inventory for 2013

An annual inventory of all SBE sensitive equipment is being performed at the moment. This exercise should be completed in the next few weeks. Kurt Snyder has been instrumental with populating and retrieving relevant inventory details as required from the inventory database. The SBE IT staff are conducting the inventory at SBE while the regional managers are assisting with the inventory at the local boards.

ASSISTANT ATTORNEY GENERAL'S REPORT

On May 15, 2013, the Open Meetings Compliance Board issued an opinion regarding the SBE's Open Meetings Act practices with regard to the approval of open and closed session minutes. The complainant had alleged that SBE regularly violated the Act by "routinely failing" to approve minutes "as soon as practicable" as required by the Act. In its response, SBE acknowledged that it had inadvertently failed to approve the closed session minutes for its February 2012 closed session, but denied all other allegations. The Compliance Board found that SBE's practices were generally consistent with the Act and stated that SBE's delay in approving the closed session minutes of February 2012 was not a "substantial violation."

The Compliance Board also commented on the recently adopted change to SBE's Bylaws, allowing the Chair to approve draft minutes after they have been circulated to Board members via email. The Compliance Board noted that they do not recommend that process, except "in the event of a long hiatus between meetings." The Compliance Board favors "affording the public the opportunity to observe the adoption" of minutes and any resulting conversation. The opinion also noted that a one month delay is not unreasonably long. Accordingly,

SBE's original process for approving meeting minutes at the subsequent meeting could be followed and the new procedure could be used only in the event that a meeting is missed.

Mr. Darsie noted that the Compliance Board is stating a preference – not a requirement – and that the Board can choose to continue to follow the newly adopted procedure. Mr. McManus noted that there are rarely any objections or discussion about approval of meeting minutes. The new process is efficient and results in minutes being approved and posted within one week of a meeting. If there is a need for discussion, that discussion can take place at the subsequent meeting. No vote was taken, but the consensus was to keep the new procedure for approval of meeting minutes in the bylaws.

PROPOSED REGULATIONS

Ms. Charlson noted that Mr. DeMarinis notified the Board members by email of the need to make a clarifying change to recently adopted proposed regulations. Specifically, COMAR 33.13.10.02C and D was amended to clarify that the provision only applies to a political committee “organized in support of a non-federal candidate.” The Board members had given their approval for this change via email, without comment or discussion.

Next, Ms. Charlson presented the following proposed changes to regulations that are generally a result of the passage of legislation during the recently concluded legislative session.

- Inspection and Copying of Public Records (33.04.01.02) - SB 279 requires an individual using the online voter registration system to provide the date the individual's Maryland driver's license or MVA ID card was issued. The proposed change includes the issue date as a “personal identification number” and therefore excludes it from public disclosure under 33.04.01.07-1. (Current regulations already exclude from public disclosure a driver's license or ID card number and last four digits of a social security number.)
- Voter Registration (33.05.01.02, 33.05.02.02 – .06, 33.05.03.01 & .03 & 33.05.04.03) - The proposed changes to Subtitle 05 are needed to reflect online voter registration, the electronic transfer of information from MVA, and the enactment of SB 279 of the 2013 Legislative Session.

With online voter registration, there are now two ways to submit a voter registration application – by paper or using the online voter registration system. This distinction is made in 33.05.01.02 and 33.05.02.02, and .04. Since some of the required content and notices for the paper VRA do not apply to the online version, only those applicable requirements are proposed in 33.05.02.03 for the online system.

33.05.03.01 currently requires that the local boards post forms online and include in their voicemail messages specific voter registration information. The proposed changes repeal the requirement that the local boards post or link to the blank voter registration application and instead require the local boards to post a link to the online voter registration system. Their voicemail messages must also inform callers of the availability of online voter registration.

Section 3-204.1 of the Election Law Article authorizes the use of a Social Security number as a signature if the applicant is a military voter or voter who lives outside of the United States. The proposed changes to 33.05.01.02 define relevant terms (absent uniformed services voters, overseas voters, and uniformed services), and the changes to 33.05.04.03 amend what constitutes a signature to allow using a Social Security number as a signature.

MVA now transfers electronic voter registration data, but the current regulations only reference MVA transferring paper forms to the local boards. The proposed changes to 33.05.03.03 recognize the electronic data transfer required by SB 765 of the 2010 Legislative Session (electronic transfer in general) and § 3-204.1 (transfer of electronic copy of applicant's signature).

SB 279 requires an individual using the online voter registration system to provide the last four digits of his or her Social Security number and the date the individual's Maryland driver's license or MVA ID card was issued. Military voters and voters who live outside of the US are exempt from the “date of issue” requirement if they do not have a Maryland driver's license or MVA ID card. In this case, they are only required to provide the last four digits of their Social Security numbers. These same requirements are proposed in 33.05.02.03.

The proposed change to the existing 33.05.02.04 (proposed as 33.05.02.05) removes the names of specific MVA forms and replaces them with more generic language. The generic language provides flexibility if MVA changes the name of a form or adds a form that is not currently listed. SBE's and MVA's requirements remain the same.

- Use of Cameras, Recorders & Communication Devices (33.07.04.02 & 33.17.06.04) - During a recent conference call, an election director suggested that voters want to use smartphones and tablet computers to access voter guides or other similar voter information while voting. Under the current regulations, use of electronic devices is not permissible. The proposed changes allow a voter to view a voter guide or similar information on a smartphone or tablet device but continue to prohibit the voter from using such devices to communicate with another person. The proposed changes create an exemption for a voter with a disability who may use a device to assist with the voting process or communicate with the individual(s) providing assistance.

Ms. Charlson noted that these proposed changes were presented and discussed during this month's election director's conference call. There was no consensus among the directors about this proposed change. Some election directors felt that allowing the use of these devices would meet voter expectations and help them cast their ballots more efficiently. In their view, the proposed change properly focuses on regulating behavior (i.e. prohibiting communication, but permitting access to voter information) not devices. Other election directors felt that it would create confusion for the election judges who would have to determine whether a voter was using his or her smart phone to obtain information about voting or to communicate with someone outside of the precinct.

Ms. Mack raised the concern that this change would result in challengers and watchers communicating voter check-in information to their headquarters. Mr. Goldstein responded that the proposed change would only permit voters to use electronic devices to access a voter guide or similar information and therefore would be inapplicable to challengers and watchers. Mr. McManus asked why there is a prohibition against photographing ballots, especially since the photograph would only show how the ballot is marked – not how it was cast. Mr. Goldstein noted that generally these provisions were put into place to protect voter privacy and ensure order and decorum in polling places. Noting the concerns discussed by the Board and those by raised the election directors, Mr. McManus asked whether the board could propose more than one set of regulations. Ms. Charlson stated that was not possible within the regulation process, but noted that if the members voted to approve the regulations, there would be a public comment period and additional hearings prior to final adoption. Mr. McManus stated that he did not want the Board to vote to approve something if they in fact have reservations about it. Instead, he stated his preference for not approving these proposed changes and instead directing staff to seek more input from the local election officials.

- Absentee Ballot Requests & Mailings (33.11.01.01, 33.11.02.01 - .04, & 33.11.03.04) – SB 279 prompted the changes to Subtitle 11.

SB 279 authorizes a voter to submit an online request for an absentee ballot. This change means that the regulations must reflect that there is a paper application and an online process to submit the request. These changes are found in 33.11.02.02. The same regulation currently requires that the local boards post a blank absentee ballot application. The proposed changes repeal the requirement to post the blank form and instead require the local boards to post a link to the online absentee ballot application.

The legislation changed the deadlines to submit an absentee ballot request and revised the "late absentee ballot application" process. The new deadlines are in the proposed changes to 33.11.02.01, and the existing deadlines in 33.11.02.02 – .04 are replaced with a reference to 33.11.02.01. The "late process" is replaced by an in-person request process in 33.11.02.04.

The legislation makes the deadlines dependent on how the voter submitted the request and wants to *receive* the absentee ballot. Specifically:

- If the voter wants the ballot sent by mail the application deadline is the Tuesday before election day.
- If the voter wants the ballot sent via the online delivery system, the application deadline is the Friday before election day.
- If the voter wants to receive the ballot in person, the application may be delivered in person through the end of election day.
- On the day an application is due, the deadline for receipt of the application is the close of business for the election office if the request is mailed. The close of business on the Tuesday before election day is 8 pm since early voting is taking place. Otherwise the close of business is 5 pm. For requests made online, by email or by fax, the deadline is 11:59 pm.

The new law requires most voters who submit an online request for an absentee ballot to submit the last four digits of his or her Social Security number and the date his or her driver's license or MVA ID card was issued. A military voter or a voter who lives outside of the United States is not required to submit the

license or ID card issue date if s/he does not have a Maryland driver's license or MVA ID card. This requirement is in 33.11.02.02C.

Finally, SB 279 also requires election officials to provide a return envelope template to voters who received the ballot electronically. (We have provided an envelope template since we started delivering ballots via the online ballot delivery system.) The proposed changes to 33.11.03.04 reflect this new requirement.

Public Notice of Election (33.17.03.01) - SB 840 of the 2013 Legislative Session requires that the local board send sample ballots at least one week before early voting starts. The proposed change to 33.17.03.01 incorporates this new requirement and sets a deadline for the mailing.

Mr. McManus made a motion to approve the proposed regulations, with the exception of the proposed changes to COMAR 33.07.04.02 and 33.17.06.04 (Use of Cameras, Recorders & Communication Devices). Mr. Thomann seconded the motion, which was unanimously approved.

PROPOSED CHANGES TO BYLAWS

Two local boards submitted amended bylaws for the Board's approval. The Harford County Board of Elections amended its bylaws to provide that in order for a quorum to be present there must be two members of the majority party and at least one member of the minority party. The Washington County Board of Elections amended its bylaws to permit the election of one or more assistant secretaries who will be responsible for ensuring board minutes are accurately compiled and transmitted in the even the secretary is absent. The bylaws also include the requirement that in the event that a vacancy results in the vacancy in an office, the board shall convene and elect a member to serve in that office.

Mr. Murray made a motion to approve the local board bylaw changes, which was seconded by Mr. McManus. The motion was unanimously approved.

OLD BUSINESS

At the last meeting, Mr. Murray requested that a decision on the waiver request by Delegate Glass be delayed until staff could determine whether the Delegate was excused from the House of Delegates during the period he stated he was sick and unable to timely submit his report. Mr. DeMarinis stated that Delegate Glass was excused from the House of Delegates during that period. Based on this information, Mr. Murray made a motion to approve the requested waiver for Delegate Glass, which was seconded by Ms. Mack. The motion was unanimously approved.

NEW BUSINESS

There was no new business.

SCHEDULING OF NEXT MEETING

The next meeting was scheduled for June 27th at 2:00 pm.

ADJOURNMENT

Ms. Mack adjourned the meeting at 3:00 pm.