

**State of Maryland** 

**State Board of Elections Meeting – August 28, 2014**

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Attendees: Bobbie Mack, Chair  
David McManus, Vice Chair (by phone)  
Patrick J. Hogan, Member  
Janet Owens, Member  
Charles Thomann, Member  
Linda H. Lamone, State Administrator  
Nikki Charlson, Deputy Administrator  
Donna Duncan Assistant Deputy for Election Management  
Keith Ross, Assistant Deputy for Project Management  
Shelly Holland, Director of Budget and Finance  
Sarah Hilton, Director, Election Reform and Management  
Jared DeMarinis, Director, Candidacy and Campaign Finance  
Paul Aumayr, Director Voting Systems  
Stacey Johnson, MDVOTERS Project Manager

Also Present: Ralph Watkins, League of Women Voters  
Barbara Sanders, League of Women Voters  
Holly Joseph

**DECLARATION OF QUORUM PRESENT**

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

**RATIFICATION OF THE PRIOR BOARD MEETING MINUTES**

In advance of the meeting, the minutes from the July meeting were reviewed by the board members and approved by the Chair. No changes to the minutes were presented.

**ADMINISTRATOR'S REPORT**

**1. Announcements & Important Meetings**

Pew Charitable Trusts Meeting

Pew hosted a meeting for election officials and representatives of State motor vehicle agencies August 20<sup>th</sup> –21<sup>st</sup> in San Francisco. Mary Cramer Wagner represented SBE at this meeting. The objective was to bring election officials and motor vehicle agencies together to work towards electronic delivery of voter registration applications. Maryland and Delaware currently receive applications electronically and were able to report on the success of this method.

Electronic Registration Information Center's (ERIC) Board of Directors' Meeting

In conjunction with Pew's conference, ERIC held a board of directors' meeting. Among the topics discussed were the integration of National Change of Address (NCOA) into ERIC and the nomination and appointment of Rebecca Wright of Rutgers University to the Privacy and Technology Advisory Board.

National Association of State Election Directors' (NASED) Meeting

NASED held its summer conference from August 22<sup>nd</sup> – 24<sup>th</sup> in San Francisco, and Ms. Wagner attended the conference. Topics discussed included recommendations from the Presidential task force on elections, the differences between ERIC and the Kansas Interstate Crosscheck, voting system certification programs and states' needs, and plans for the U.S. Election Assistance Commission (EAC). Ms. Lamone explained that the EAC does not currently have any

commissioners and cannot approve new voting system standards and stressed the importance of confirming the nominees to the EAC. In response to a question, Mr. Aumayr explained that the vendors typically need several years to develop systems to new voting system standards. Mr. Hogan suggested sending a letter to Senators Mikulski and Cardin expressing SBE's concerns about the EAC's lack of commissioners and its impact on election officials.

## **2. Election Reform and Management**

### Election Judge Training

Rick Urps will visit several local boards of elections offices to observe election judge training classes scheduled for September and early October. The purpose of the visits is to confirm that the local boards are providing adequate training and hands-on experience for election judges in advance of the general election.

### Military and Overseas Voter Empowerment (MOVE) Act Compliance

This week, SBE finalized the general election absentee ballot mail and web delivery schedule for domestic, civilian voters and military and overseas voters. September 20, 2014 is the 45-day MOVE Act deadline to distribute absentee ballots to military and overseas voters for the 2014 General Election.

### Voter Services Website

We are currently testing minor changes to the voter look-up website, polling place locator, and online voter registration system. Dr. Kathryn Summers of the University of Baltimore reviewed the online voter registration system and offered ways to improve the usability and readability of the system, and many of her suggestions have been incorporated. Testing is going very well, and we expect that this quarterly release will be put into production in the next two weeks.

### Audit of Help America Vote Act (HAVA) Funds

SBE expects that the EAC's Inspector General (IG) will conduct in early 2015 an audit of the federal funds SBE received under HAVA. In preparation for this audit, the EAC offers the services of an auditing firm to identify areas where the IG's audit team will likely focus and make recommendations based on other states' recent experiences. Nikki Charlson and Shelly Holland met with the auditing firm, and the meeting was very helpful. As a result of this meeting, SBE will make technical updates to the HAVA State Plan, identify how we demonstrate that we meet the maintenance of effort requirements, and generally prepare for the upcoming audit.

## **3. Voter Registration**

### MDVOTERS Release 5.5: Mock Election

The mock election for MDVOTERS release 5.5 is currently taking place. The majority of the release pertains to the new Candidacy module within MDVOTERS. MDVOTERS has a built-in candidacy module, and SBE decided to develop this module to replace SBE's legacy system for candidate filings. The development hours were already budgeted in the contract and did not require additional funds. Once the mock election is complete, release 5.5 will move into production. Development for release 5.6 is currently under way. After user acceptance testing and a thorough mock election, release 5.6 will move into production the weekend of December 20<sup>th</sup>. This will allow candidates for the 2016 Presidential election to file for office. In 2015, enhancements and maintenance will occur.

### Ballot and Results Reporting System (BARRS)

The contract for the current Election Management System (EMS), SBE's legacy system for building ballots and generating results, is scheduled to end December 31, 2014. SBE is working

to re-create the current EMS environment while developing a new system (BARRS) which will be maintained in-house. EMS will support the 2014 election and BARRS will be in place for the 2016 Primary Election. Ms. Lamone noted that this effort involves significant work and commended the staff working on the project.

#### **4. Candidacy and Campaign Finance (CCF) Division**

##### Candidacy

August 4, 2014 was the deadline for non-principal party and petition candidates to submit their remaining required documents in order to appear on the 2014 General Election ballot.

##### Campaign Finance Reporting

On August 5<sup>th</sup>, the semi-annual Contribution Disclosure Form was due. This filing is required by a person who makes campaign contributions greater than \$500 and: (1) does business with the State involving consideration of \$100,000 or more; or (2) provides lobbyist compensation of \$500 or more. The Division received over 200 disclosure forms from qualifying persons. This is the last paper filing. Starting with the February 2015 report, all filings will be electronic and available on the website for public viewing.

On August 26<sup>th</sup>, the Pre-General 1 campaign finance report was due for all political committees participating in the gubernatorial election.

#### **5. Project Management Office**

The Project Management Office (PMO) continues to work on several initiatives. Highlights are:

##### Overall

SBE's PMO continues its work on the detailed project planning for the 2014 election cycle. This includes the elaboration of the 2014 Master Schedule, coordination of the Call Center support and the SBE helpdesk functionality.

##### New Voting System Replacement (NVSR) Project

Since the last Administrator's Report, we completed or worked on a number of tasks related to this project.

##### Voting System Certification.

The State certification process of four systems is continuing. Paul Aumayr has been reviewing documentation submitted by the applicants, and it is expected that accessibility testing of two systems – Hart Intercivic and Everyone Counts – will occur in September. The required public demonstration will be held on September 16<sup>th</sup> at the University of Baltimore.

The Voting System Solution Request for Proposal (RFP) was published on eMaryland Marketplace and released on July 22<sup>nd</sup>. The closing date for RFP responses has been extended to September 9<sup>th</sup> at 4:00 pm. On July 31<sup>st</sup>, SBE conducted a Pre-Proposal Conference, and the deadline for potential offerors to submit questions related to the RFP was August 26<sup>th</sup>.

SBE received a number of questions from potential offerors and published four sets of responses to the questions. As the result of some of the questions and discussions with SBE management and the Department of Information Technology's (DoIT) AAG, SBE issued amendments to the RFP. All four sets of questions and answers, amendments, and the updated RFP are posted on eMaryland Marketplace. In addition to the questions received from potential offerors, SBE

received questions from constituents, and those questions were reviewed and documented with SBE's answers.

In anticipation of the closing date for RFP responses, SBE has been hard at work setting the evaluation framework, detailing the evaluation guidelines, and identifying and selecting the evaluation team's members and advisors. There is a cross section of representatives on the evaluation team. The team's first meeting for (evaluator and advisors) occurred on August 21<sup>st</sup>. In this meeting, we discussed the detailed role and responsibilities, logistics, and the work schedule over the next couple of months. SBE's contractors have been supporting the evaluation preparation and other activities.

SBE's procurement for a central warehouse is well underway. SBE continues to work with the Department of General Services (DGS) to secure a location to receive and test the new voting equipment and dispose of the current system. DGS's RFP was released and closed for responses on August 11<sup>th</sup>. Since that time, the team, including local board representatives, participated in site visits for the six locations. Mr. Aumayr reported that the locations were close to BWI Airport and Route 1 and that security for the warehouse was an important consideration. We will continue to work with DGS to make a recommendation and award and during the warehouse build-out. In response to a question, the value of the current voting units is unknown, although there may be some interest from other states and jurisdictions overseas.

SBE's PMO and the NVSR project team continue to work with DoIT and its System Development Life Cycle (SDLC) requirements for the project. In the next few weeks, we are expecting to complete the Phase 4 (Requirements Analysis) documentation and receive the formal approval from DoIT to proceed with Phases 5 – 8 which includes the implementation phase.

SBE's PMO and the NVSR project team also continue the internal identification and management of project risks and issues. There are monthly meetings held with SBE senior management to review the existing risks and how they are handled. In addition, the project schedule is continually being reviewed and adjusted as necessary.

#### Ballot and Results Reporting System (BARRS) Project

SBE's PMO continues to work with Mary Wagner and the BARRS team with regularly scheduled SBE PMO and DoIT meetings. Both of these meetings are to monitor the project's progress and provide guidance where necessary. The primary focus is on the SDLC and budget requirements.

#### Other

Currently SBE's PMO is updating the annual Information Technology Master Plan and two Information Technology Project Requests for the NVSR and BARRS projects. In addition, Keith Ross has been working with the SBE stakeholders on the initial FY16 budgets for both projects.

SBE senior management started discussions with DoIT's security team concerning the vulnerability assessment program directed by the State's Director of Cyber Security. The Governor has earmarked funds to perform vulnerability assessments for more than 50 State's agencies and departments, and SBE was selected to be one of the first agencies to participate. In late July, SBE met with DoIT's lead assessor to discuss the scope and timeline of our upcoming assessment. SBE will continue its work with the DoIT security team to finalize when the 1 – 2 day assessment will take place over the next few months.

SBE's PMO continues to work on the 2014 Master Schedule. We have begun our review sessions for the 2014 General Election. The Master Schedule includes the deliverables and tasks necessary to run the election, special projects, and the administrative tasks.

On August 15<sup>th</sup>, SBE submitted the first of two annual mandatory DGS inventory reports. The first report was for all equipment reported missing or stolen in FY14; the equipment initially reported as missing was subsequently found and this report reflects this. The second report, which is due on September 15<sup>th</sup>, will be the annual report of SBE's entire inventory and selected supplies. Inventory management and reporting is typically part of State and federal audits, although the expected federal audit will focus only on the equipment that was purchased with federal funds.

SBE is now under the State's enterprise license for the Smartsheets system. Smartsheets is a tool SBE and many of the local boards use to manage the many election tasks and related election projects. The Smartsheets system was introduced into our environment a little over one year ago and has gained statewide acceptance. Prior to the current license arrangement with DoIT, SBE had its own license agreement with the vendor.

## **6. Voting Systems**

### Electronic Pollbooks

SBE has drawn up detailed specifications for the changes required for the pollbooks to implement same day registration for early voting, beginning in 2016. These specifications have been forwarded to ES&S, the pollbook vendor, for their review. It is expected there will be discussions with them to refine these specifications.

The team has also been reviewing the pollbook logs from the 2014 Primary Election for SBE's comprehensive local board audits. This includes reviewing about 8 millions lines in the logs.

In response to a question, Mr. Aumayr reported that the current electronic pollbooks are still in good shape and do not need to be replaced.

### Ballot Programming

Ballot programming for the 2014 General Election has begun. Natasha Walker is leading this effort, with support from ES&S' ballot programmer, the Voting System team, and the Regional Managers. There are over 300 ballot styles, and ballots are now posted for review.

### Election Temporary Staff

SBE has been in discussions with Kennedy, our staffing vendor, to ensure there will be sufficient staff for the 2014 General Election. Many of those hired for the primary election will return for the general election. This includes the county technicians, technicians for the pre-election logic and accuracy testing, Election Day technicians and trainers for these positions.

### Election Documentation

Minor changes to documentation are being made. The changes will be made to the Conducting the Election Guide, the comprehensive guide for the voting system; documents related to updating the electronic pollbooks to reflect early voting transactions; and the recount manual.

## **7. Information Technology**

### Inventory of SBE Computer Equipment

An annual inventory of all SBE computer equipment, including SBE equipment located at the local boards, is currently being performed. This exercise should be completed in the next two weeks.

Kurt Snyder and the Regional Managers have been instrumental with populating and retrieving relevant inventory details as required from the inventory database.

#### Frederick County Office Relocation

The Frederick County Board of Elections recently moved to its new location. SBE's IT Division, Frederick County IT representatives, and Network Maryland worked closely together to install a new data communication circuit at the new location (355 Montevue Lane, Suite 101, Frederick MD 21702-8213). A New 5 on-net/VPRN circuit from SBE to Frederick County Board of Elections was provisioned. Connectivity tests were conducted, and they were successful.

#### Retrieval of Old Server Equipment at the VROC

Kurt Snyder and Vincent Scott retrieved 31 servers from the VROC, one of SBE's two data centers for MDVOTERS, and transported them to SBE's warehouse in Annapolis for disposal. 92 hard disk drives were subsequently retrieved from the 31 servers and brought back to SBE for security reasons and for secure disposal. The retrieved old server equipment will be processed for appropriate disposal following DGS disposal procedures and guidelines.

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

Ms. Lamone reported that on August 29<sup>th</sup>, Mr. Darsie will represent SBE at a hearing concerning a petition candidate that failed to submit the required number of signatures, and he is preparing for that hearing. In his absence, Ms. Lamone presented his report.

1. On August 1, 2014, several individuals with disabilities, the American Council of the Blind of Maryland, VerifiedVoting.org, and SaveOurVotes.org sought to intervene in the litigation brought by plaintiffs National Federation of the Blind and others against the State Board of Elections ("State Board"). National Federation of the Blind v. Lamone, Civ. No. RDB-14-1631 (U.S.D.C., D. Md.). Judge Richard Bennett on August 8 ordered that the "putative-Intervenors" could participate in the proceedings subject to his later final ruling on whether to allow the intervention. A three-day trial was held involving all of the parties on the 13th, 14th and 26th of August. The basic issue in the case is whether the Americans with Disabilities Act requires that Maryland provide an online ballot marking tool for use by absentee voters with disabilities despite lack of State Board certification required under § 9-308.1 of the Election Law Article, Md. Code Ann. A ruling from Judge Bennett is expected shortly. One of the lead counsel representing the State Board, Assistant Attorney General Dan Friedman, was this week appointed to the Maryland Court of Special Appeals and will therefore be withdrawing from the case. In response to a question, Ms. Charlson stated that the online ballot marking tool is almost ready for use and will be tested if the judge orders its use for the 2014 General Election.

2. Russell Neverdon, an independent candidate for the Office of State's Attorney for Baltimore City, filed a complaint on August 25, 2014, against the Board of Elections for Baltimore City and the State Board, challenging the local board's determination that Mr. Neverdon's nominating petition lacked sufficient valid signatures to put his name on the general election ballot. Essentially, Mr. Neverdon argues that the Baltimore City board—in following State Board petition verification procedures—misconstrues the law when it rejects as "invalid" the signatures of certain names on the petition that election officials are able to identify as belonging to a registered voter. A motion for summary judgment was filed on behalf of the State Board and Board of Elections for Baltimore City on August 26. A hearing on the legal arguments raised in the motion is scheduled for Friday, August 29, and, if necessary, an evidentiary hearing will be conducted on September 5, 2014.

3. On July 21, 2014, Cindy Walsh, the fourth-place finisher in the 2014 Democratic Party primary for Governor, filed a lawsuit seeking to invalidate the election results and to recover \$500,000 in election expenses and other damages. That complaint was superseded on August 8 by an amended complaint that, again, seeks to overturn the election, but was changed to assert a claim for \$100,000 in damages against each of five individuals sued in their personal capacities—the five individuals sued are the top three finishers in the primary election—Lt. Gov. Anthony Brown, Attorney General Doug Gansler, and Delegate Heather Mizeur—and State Board Chair Bobbie Mack and State Administrator Linda Lamone. A motion to dismiss was filed on behalf of Ms. Mack and Ms. Lamone on August 22, 2014.

4. The Court of Special Appeals, in an unreported opinion dated August 13, 2014, upheld the circuit court’s decision that the Howard County Board of Elections properly rejected a referendum petition because the petition sponsors had not provided a “fair and accurate” summary of the zoning ordinance they hoped to challenge. *Jane Gray, et al. v. Howard County Board of Elections*, No. 0690, September Term, 2014 (Md. Ct. of Special Appeals, August 13, 2014). The petition sponsors also requested, and were denied, an appeal to the Maryland Court of Appeals. As a result of these orders, there will be no ballot question on the zoning ordinance for Howard County voters in the general election.

#### **APPROVAL OF POLLING PLACE CHANGES**

Ms. Duncan presented six requests from five local boards to change polling places for the 2014 General Election. State law requires that the State Board approve any polling place changes between a primary and general election. The proposed changes are the result of building demolitions, delays in constructions, or problems experienced in recent elections.

1. Anne Arundel County 06-012: Relocate from West Annapolis Elementary School to Taylor Avenue Fire Station
2. Anne Arundel County 01-004: Relocate from Chesapeake Arts Center to Brooklyn Park Middle School
3. Baltimore County 12-01 and 12-02: Relocate from Eastwood Center to Berkshire Elementary School
4. Cecil County 03-02 and 03-07: Relocate from Singerly Fire House to Elkton High School
5. Queen Anne’s County 02-02: Relocate from Ramsey Pontiac to NCS Inc. Building
6. Washington County 10-01: Relocate from South Hagerstown High School to E. Russell Hicks Middle School

Ms. Duncan explained that each local board will notify the affected voters of the change in the location. This notification includes a new voter notification card as well as the new location on the specimen ballot mailed before the election. The local boards also post at the former location signs directing voters to the new location.

Mr. Hogan made a motion to approve the polling place change, and Ms. Owens seconded the motion. The motion passed unanimously.

#### **APPROVAL OF FINAL REGULATIONS**

Ms. Charlson presented for final adoption proposed changes to Code of Maryland Regulations (COMAR) 33.01.05 – Administrative Complaint Process. The proposed changes were published in the June 13, 2014, edition of the *Maryland Register*. No public comments were received. This change defines when the State Board is required to conduct a hearing in response to the filing of an administrative complaint.

Mr. Hogan made a motion to adopt as final the changes to COMAR 33.01.05, and Ms. Owens seconded the motion. The motion passed unanimously.

### **APPROVAL OF PROPOSED REGULATIONS**

Mr. DeMarinis presented a new chapter of regulations (Chapter 17 Participating Organizations). These regulations were presented at the July 2014 meeting but were tabled until this meeting.

The new regulations define the registration and reporting requirements for participating organizations. These organizations are defined in State law as an entity organized under §501(c)(4) or (6) of §527 of the Internal Revenue Code that makes contributions for the express purpose of the recipient to make an independent expenditure or disbursement. The reporting requirements are identical to the regularly scheduled campaign finance reports.

Mr. Hogan made a motion to adopt for publication the new Chapter 17, and Mr. Thomann seconded the motion. The motion passed unanimously.

### **APPROVAL OF FINAL REGULATIONS**

Ms. Charlson presented for final adoption new regulations and proposed changes to 33.10, 33.13, 33.14.01-.02, 33.17, 33.18, and 33.20.01 -.02. The regulations were published in the March 21, 2014 and April 18, 2014 editions of the *Maryland Register*, and no comments were received. Mr. McManus made a motion to adopt as final, and Ms. Owens seconded the motion. The motion passed unanimously.

### **APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS**

Mr. DeMarinis presented 48 requests for waivers of campaign finance reporting late fees.

1. Ali, Vanessa District 14 for
2. Amatetti, Edward Friends of
3. Bego, Orlando J. Friends Of
4. Bernson, Vic For Maryland
5. Brockington, (Jessica) For State Central Committee
6. Cantwell, Grover Jr.- Orphans Court Candidate
7. Citizens for Real Republicans Values Slate
8. Cronan, Philip Citizens for
9. DeBoy, Steven J. Sr. Citizens For
10. Dennis, Roxie for Central Committee, Friends of
11. Evans, Eloise Friends of
12. Ewing, Ryan for Talbot
13. Feehley, William Friends of
14. Foreman, Marcus Friends of
15. Forte, Margaret A. Friends of
16. Gargano, Peter V. Citizens for
17. Grannon, Eric for Maryland
18. Hands, Zach for House of Delegates
19. Harrison, Paul Fights for Freedom
20. Hay, Kimberly A. Elect
21. Holmes, Vernon Friends of
22. Jackson, Neal for County Commissioner
23. Jamison, John David, Friends to Elect, to the Orphans Court
24. Jump the Broom for Marriages
25. Kahler, Jason Baltimore For
26. Marines for Maryland Slate
27. Maynard-Tucker, Shereese Citizens For
28. McMahan, Jim Citizens For, Captain
29. Millennial Maryland PAC
30. Montgomery Women - Leadership & Political Action Committee
31. Nason, Bud Friends of
32. Onye, Stanley Dr. Friends of for Delegate
33. Psychiatric PAC MD
34. Rappaport, Margaret Friends Of
35. Reed, Sandra, Citizens for

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|---------------------------------------------------------------|----------------------------------------|
| 36. Robinson, Jansen M. Citizens to Elect                     | 42. Trescott, Sara Lou Friends of      |
| 37. St. Preux, (Vardly) Citizens for                          | 43. Ulrich, John Friends of            |
| 38. Supervisory, Management and<br>Confidential Interests PAC | 44. Veterinary PAC MD                  |
| 39. Sutley, Benjamin Vote                                     | 45. Walsh, Thomas, Citizens for        |
| 40. Terry, Derrick Friends of                                 | 46. Widmyer, Mark L. Citizens to Elect |
| 41. Travis-Howard, Emma Friends of                            | 47. Williams, Elaine Friends of        |
|                                                               | 48. Ziegler, Stephen, Elect            |

In response to a request about the difference between grants for chair only and grants for treasurer only, Mr. DeMarinis explained that the State Board can waive liability for one of the two responsible individuals. The recommendation to grant for one but not both is made when one individual has grounds to request the waiver while the other individual does not. Mr. Hogan restated his request to receive information on the number of denied waivers.

Mr. Thomann made a motion to accept staff's recommendations on the waiver requests, and Mr. Hogan seconded the motion. The motion passed unanimously.

### **OLD BUSINESS**

At the July meeting, there was a question about the number of calls by county answered by SBE's call center. Ms. Charlson referred the members to a table in the board meeting folder showing the number of call by count and how many of these calls were escalated by the call center to SBE or the appropriate local board of elections.

At the last meeting, Mr. McManus requested information from Guy Mickley, the former chair of the Maryland Association of Election Official's Personnel Committee, about the county budget offices that did not respond to the association's survey on the salary adjustments for election directors and deputy directors. Ms. Charlson reported that Mr. Mickley was unable to attend this meeting as he was out of the state, but the Association submitted a letter providing the requested information. The Association's letter states that the majority of the counties' budget offices responded to the survey and approved the proposed salary increase and this information was included in the spreadsheet originally distributed at the February board meeting. In response to a question from Mr. McManus, Ms. Charlson stated that she did not know how many attempts the Association made to follow up with those county budget offices that did not respond.

### **PARALLEL TESTING – SELECTION OF COUNTY**

Ms. Owens randomly selected the Prince George's County Board of Elections to provide a voting unit for SBE's election day parallel testing.

### **DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

No campaign contributions were disclosed.

### **SCHEDULING OF NEXT MEETING**

The next meeting was scheduled for September 25, 2014, at 2:00 pm.

### **ADJOURNMENT**

Mr. Hogan made a motion to adjourn the open meeting, and Ms. Owens seconded the motion. Ms. Mack adjourned the meeting at 3:20 pm.