

State of Maryland 

State Board of Elections Meeting – September 25, 2014

Attendees: Bobbie Mack, Chair
David McManus, Vice Chair
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
Sarah Hilton, Director, Election Reform and Management
Jared DeMarinis, Director, Candidacy and Campaign Finance
Paul Aumayr, Director Voting Systems

Also Present: Ralph Watkins, League of Women Voters
Ramona Moore Baker
Lynn Garland
Rebecca Wilson, SAVE Our Votes
Stan Boyd, SAVE Our Votes

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 August meeting were reviewed by the board members and approved by the Chair. No changes to the minutes were presented. Ms. Owens made a motion to ratify the approval of the minutes, and Mr. McManus seconded the motion. The motion passed unanimously.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

NFB's Web Accessibility Day

On September 9th, the National Federation of the Blind and the Maryland Technology Assistance Program held a one-day program on web accessibility. Ms. Charlson presented an overview of SBE's online ballot delivery system. Other topics included the Department of Homeland Security's trusted testing program and upcoming changes to Section 508, the government's current standard for web accessibility.

2. Election Reform and Management

U.S. Election Assistance Commission - Nominees

The Senate Rules Committee held a hearing for the two Republican nominees to the Election Assistance Commission and was scheduled to vote on September 17, 2014. Unfortunately, there was not a quorum on September 17th, and the two names were not forwarded to the full Senate for confirmation. (The committee previously forwarded to the full Senate the names of the two Democratic nominees.) It seems likely that the nomination process will not be completed until after the upcoming election. A draft letter urging Senators Mikulski and Cardin to support the nominations will be prepared and circulated for review.

Military and Overseas Voter Empowerment (MOVE) Act Compliance

On Friday, September 19th, SBE complied with the MOVE Act which requires election officials to transmit absentee ballots to military and overseas voters at least 45 days before election day.

The deadline fell on Saturday, September 20th, so on Friday, September 19th, SBE sent absentee ballots by web delivery to exactly 800 UOCAVA voters and mailed 411 absentee ballots to UOCAVA voters who requested to receive their ballot by mail.

People On the Go (POG) Conference

Rick Urps provided a demonstration of a touchscreen voting unit and its accessibility features at a People On the Go conference at the BWI Marriott on September 20th. People On the Go is a group of advocates with intellectual and developmental challenges, and a partnership between the Maryland Developmental Disabilities Council and the Maryland Center for Developmental Disabilities.

Election Judges' Training

Mr. Urps observed election judge training in Carroll, Cecil, and Harford Counties and reported no issues with the training. Mr. Urps is scheduled to visit the three lower-shore counties and Talbot County.

3. Voter Registration

MDVOTERS Release 5.5

The mock election for release 5.5 was successfully completed and moved into production. The team is now focusing on the continued candidacy filing development of release 5.6. The deadline to move version 5.6 into production is December 20th. This will allow the Candidacy and Campaign Finance Division and local boards of elections to accept candidate filings for office for the 2016 elections.

Electronic Registration Information Center (ERIC) Mailing

Under the ERIC's membership bylaws, each participating state is required to contact individuals identified as eligible but not registered to vote. In cooperation with MVA, SBE received the email addresses of approximately 17,000 eligible individuals. Those individuals will be contacted via email and encouraged to register or check their voter registration through SBE's voter services website. Postcards will be mailed to an additional 190,000 eligible individuals with the same message. Delivery of the emails and postcards is expected to start October 1st. The deadline to register or make changes to voter registration is 9:00 pm on October 14th. The template of the postcard was provided in the board meeting folder.

Ballot and Results Reporting System (BARRS)

The BARRS team is continuing to glean information regarding the current election management system to assist in developing the new in-house system. The team is pleased to announce the addition of lead developer, Phil Pritchard. Mr. Pritchard will begin work on September 29th. The team has also identified additional personnel needed for the project. The additional positions include a junior developer, two testers and a database administrator. SBE is currently working with the Department of Information Technology (DoIT) and the Department of Budget and Management to secure additional funding.

4. Candidacy and Campaign Finance (CCF) Division

Campaign Finance

On September 15th, Mr. DeMarinis was invited by the Montgomery County Council to attend another workgroup session regarding Bill 16-14. The bill would establish a public election fund

to provide public campaign financing for a candidate for a County Executive and County Council. The current version of the bill limits funds received but does not limit expenditures. It is scheduled for a full council vote on September 30th. The bill has a high likelihood for passage. SBE would be in charge of the campaign finance entity reporting for the candidates. This is a county-funded program with an expected budget of \$16 million.

Enforcement

The CCF Division had multiple inquiries from candidates on whether the use of campaign funds was permissible for foreign travel associated with a “Sister City” program. The CCF Division determined that the nexus between the expenditure and the individual’s candidacy is too tenuous and not allowable. One campaign finance entity had already made expenditures and must be reimbursed.

The audit of the Mizeur-Coates gubernatorial ticket is nearly complete. The committee has refunded to the Fair Campaign Financing Funds \$97.82 in unspent funds.

5. Project Management Office

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

Overall

SBE’s PMO continues its work on the detailed project planning for the 2014 General Election.

This includes but is not limited to 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.

The Voting System Solution (VSS) Request for Proposal (RFP) closed for responses on September 9th. The evaluation team is evaluating the technical and then financial responses from the responding four vendors and will make a recommendation to the Procurement Officer. The Procurement Officer will make a recommendation to the State Administrator, and the State Administrator will decide on the recommendation and submit her decision to the State Board.

There are several steps and reviews required after the recommendation and prior to the contract award. Any unaccounted for delays will impact the project schedule, when the contract is presented to the Board of Public Works for approval, and the implementation phase of the project. SBE’s PMO, the Voting System Governance Team, and the project team will continue to focus on identifying any scheduling risks and issues and work with SBE senior management to mitigate or resolve.

The Department of General Services (DGS) selected SBE’s central warehouse. It is located in Anne Arundel County. The Board of Public Works must approve the contract, and SBE will work with the landlord to build out the facility to meet SBE’s specific needs in time for the first quarter opening of the warehouse.

SBE is also in the process of procuring a new inventory system. The system will be procured and implemented prior to the start of delivery of the new voting system equipment. The inventory system will be used to record all the new voting system equipment and supplies.

The project team continues its detail planning and work on other aspects of the project. At the determination of the new voting system, several sub-projects will be managed that include the procurements of booths, carts, election supplies, blank and printed ballots, and voter outreach in addition to other areas.

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 Reports Reporting System (BARRS) Project

SBE's PMO continues to work with Mary Wagner and her BARRS project team. During this reporting period, Mr. Ross held weekly project management status meetings, worked with the project team on the FY15 and FY16 budgets, and provided documentation reviews.

Other

The PMO is gearing up for the general election with the setting up of the call center support and SBE's helpdesk system. Call center support will be provided for SBE and four local boards of elections (Baltimore City and Anne Arundel, Baltimore, and Prince George's Counties).

SBE's PMO completed and submitted to the DoIT its Information Technology Master Plan (ITMP) for fiscal year 2016. The ITMP is the annual submission requirement that provides a report of the accomplishments, short and long term goals, and the information technology infrastructure and support for the agency. This master plan was previously provided to the State Board. In addition, the PMO completed its submission of the FY15 Information Technology Project Requests (ITPR) for the NVSR and BARRS projects. The last required annual submission is the FY16 ITPRs for NVSR and BARRS; this submission will be completed in the next week.

As reported in the last Administrator's Report, the governor earmarked funds for vulnerability assessments to be performed in over 50 of the State's agencies and departments. SBE was selected to be one of the first to participate in this program. Working with the DoIT's Security Team, SBE is now in the final stages of its vulnerability assessment for the MDVOTERS, online voter services, and the MD CRIS systems. It is likely that, because of their content, the security reports will be protected from public disclosure but will be available to the State Board members for review.

SBE submitted to DGS its annual report of inventory and selected supplies on September 16th. This submission completes the FY14 annual inventory reporting requirements. On a related note, SBE was notified that DGS intends on performing an audit of SBE's inventory process and procedures. The audit date has yet to be determined.

The process improvements for the 2014 Gubernatorial General were distributed to the local boards. Improvements were identified and implemented in Voter Registration, Field Services, Online Voter Services, Voting Systems, and in other areas.

SBE's PMO continues to work with SBE management and staff managing the 2014 Master Schedule. We have begun our review sessions for the Gubernatorial General election coming up in November. The Master Schedule includes the deliverables and tasks necessary to run the election, special projects, and the administrative tasks.

6. **Voting Systems**

Voting System Public Demonstration

On September 16th, SBE hosted a public demonstration of three voting system solutions that have been submitted for State certification. The public demonstration is part of the State certification process. The three solutions available at the public demonstration were Everyone Counts, Hart InterCivic, and Election Systems and Software (ES&S). Representatives of the local boards of elections, individuals with disabilities, and other interested individuals attended the demonstration. We asked each individual who attended the public demonstration to complete a survey, and we are currently compiling the survey results (approximately 60 for each system) and will incorporate them into the certification process. There was a discussion about what happens if no system meets the State's expectations.

Ballot Programming for the 2014 General Election.

With the assistance of two ballot programmers from ES&S, Natasha Walker led the three-week ballot programming effort for the general election. There are 337 ballot styles statewide, and each ballot style has several formats, including touchscreen, audio, paper and 11" inch paper for fax and electronic delivery. After proofing by the local boards of elections, the Regional Managers reviewed the databases prior to finalization and dispatch to the local boards.

Logic and Accuracy Testing

Following the delivery of the GEMS databases, some local boards started the pre-election logic and accuracy testing of their equipment for the general election, and this will continue well into mid-October.

Ballot Printing

Ballot artwork has been forwarded to the three printing vendors. The vendors are Runbeck Election Services, which prints absentee ballots and mails to requesting voters and IVS and Single Source, which print ballots for provisional voters, ballots provided to voters who reside in nursing homes and assisted living facilities, and absentee ballots to voters who request a ballot in person at the local board's office. IVS and Single Source also print test-decks, which are used to perform the logic and accuracy testing on the optical scanners.

Conducting the Election Guide - Updates

Following a review after the 2014 Primary Election, including input from both SBE and the local boards, some minor changes were made to the *Conducting the Election Guide*, and these revisions have been disseminated.

Electronic Pollbook Software Update.

SBE had a conference call with ES&S to discuss the proposed software updates in anticipation of the same day voter registration implementation in 2016. This was primarily to answer any questions from ES&S concerning the specifications we submitted and to ensure there are no ambiguities in those specifications. ES&S submitted a quote for this work, and it is anticipated that a testable version will be delivered in December or January.

7. **Information Technology**

Emergency Generator

An emergency standby generator has been rented for the upcoming election in the rare occurrence of a power outage at SBE. The emergency standby generator will be delivered, installed and tested on October 21, 2014. 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 18, 2014. Mr. Ross noted that on the day the generator was to be returned after the 2014 Primary Election, SBE's offices lost power and used the generator. The generator worked until power was restored, but SBE identified additional electrical hook-ups that were needed.

Two-Factor Authentication for Teleworking VPN access

To protect SBE's networks during remote access, SBE IT's Division and its firewall vendor DISYS have implemented two-factor authentication for teleworking access to the SBE network. This two-factor authentication adds a second layer of security to the user's VPN user account, keeping the user's account secure even if the user's password is compromised. It accomplishes this by verifying the user's identity using a second factor (like the user's phone or other mobile device) for authentication which is separate and independent from the user's username and password. The implemented solution will also alert the user right away (on their phone) if someone is trying to log in as them.

Ms. Charlson referenced the 2014 Primary Election data in the board meeting folder. In response to a question, she explained that the data followed expected trends, although absentee turnout was slightly lower than normal. She noted that the percentage of voters casting ballots during early voting is steadily increasing, with Talbot County voters leading the State with almost 28% of their turnout occurring during early voting. For the most part, early voters appear to be former election day voters. Early voters in Kent, Talbot and Worcester, however, appear to be voters who previously voted by absentee ballot, as the absentee voting rate in these counties has decreased since early voting began. A redesign of the provisional ballot application seems to have reduced the number of provisional ballots rejected for lack of signature. In response to a question, Ms. Charlson explained the process of identifying voters who appear to have voted more than once and the role the Office of the State Prosecutor in this effort.

In response to a question about whether votes are stored on SBE's server when a voter uses the online ballot marking tool, Ms. Charlson responded that SBE does not save voter's selections. The selections are transmitted to SBE's server solely to generate the pdf version of the ballot but are not stored.

ASSISTANT ATTORNEY GENERAL'S REPORT

Jeff Darsie was not present for the meeting, and there was no Assistant Attorney General's report.

RATIFICATION OF ADDITIONAL EARLY VOTING CENTER

Ms. Charlson explained that the members of the State Board previously approved by email a second early voting center in Charles County, and because this approval had made by email, the action needed to be ratified at this meeting.

The Charles County Board of Elections requested a second early voting center because a significant amount of the parking for its early voting center had been demolished. The Election Director found a location for a second early voting center, and the local board is planning to use this center as its second location in the 2016 elections.

Mr. Hogan made a motion to ratify the approval of the additional early voting center in Charles County, and Mr. McManus seconded the motion. The motion passed unanimously.

APPROVAL OF POLLING PLACE CHANGES

Ms. Duncan presented a request from the Prince George's County Board of Elections to change two polling places for the 2014 General Election. The proposed changes are the result of construction in schools that were planned as polling places.

1. 07-05: Relocate from Glendarden Woods Elementary School to Sylvania Woods Elementary School
2. 20-07: Relocate from Tulip Grove Elementary School to Tulip Grove Elementary at Meadowbrook

Ms. Duncan explained that each local board will notify the affected voters of the change in the location.

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

REQUEST FOR CIVIL PENALTIES

Mr. DeMarinis presented his findings on the complaint filed against Change Maryland and the Hogan-Rutherford Committee to Change Maryland. This complaint alleged that Change Maryland engaged in campaign finance activity without establishing a campaign finance entity, failed to report an in-kind contribution to the Hogan committee, and had incorrect authority lines on its social media pages.

Mr. DeMarinis reported that SBE has no authority over exploratory activities and therefore, there was no finding related to Change Maryland engaging in campaign finance activity without establishing a campaign finance entity. Mr. DeMarinis noted that SBE's civil enforcement authority is limited to campaign finance activity by filed candidates.

The in-kind contribution at issue was an internal poll conducted by Change Maryland. Mr. DeMarinis explained that the Hogan-Rutherford committee deemed that the poll had no value and therefore did not report it as an in-kind contribution from Change Maryland. Using Federal Election Commission regulations to establish the value of a poll as a guide and the committee's use of the poll to demonstrate that the poll had value, Mr. DeMarinis found that the poll had value and should have been reported as an in-kind contribution. He recommended imposing a \$50 fine for this violation as it is consistent with SBE regulations that went into effect after the campaign finance report that omitted the in-kind contribution was submitted.

Mr. DeMarinis explained that the Larry Hogan for Governor and the Hogan-Rutherford Committee are essentially the same campaign finance committee and that there was no intent to confuse the public. As a result, Mr. DeMarinis concluded that no civil citation will be issued for the authority lines.

There was a discussion about the timing of the law authorizing civil penalties, the effective date of the regulations defining fines for civil citations, and the filing of the campaign finance report that did not include the value of the poll, and how to evaluate the value of a poll and the applicability of the Federal Election Commission's regulations. Mr. DeMarinis explained that the independent valuations of the polls were conducted from a commercial, not political, perspective, and the committee used these valuations in their reports. He reported that the Hogan-Rutherford committee was cooperative and accepted the poll's value as determined by the Federal Election

Commission's regulations and that he did not believe that the failure to report this contribution was willful.

Mr. McManus made a motion to waive the fine because of the ambiguity as to what applied in this circumstance and formed the basis of a violation, and Ms. Owens seconded the motion. The motion passed unanimously.

In response to a question how an investigation is conducted, Mr. DeMarinis explained that SBE gives the subject of the complaint time to respond and SBE needs time to investigate the issue thoroughly. The time to investigate depends on the complexity of the complaint and whether the complaint is a case of first impression. In response to a question about the two other complaints related to the gubernatorial campaigns, Mr. DeMarinis stated that he did not think that the investigations would be complete by the next board meeting and an update on the investigations could be provided in closed session.

APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS

Mr. DeMarinis presented 20 requests for waivers of campaign finance reporting late fees.

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| 1. 1000 Maryland Women PAC | 11. McAllister, Mike Friends of |
| 2. Alduino, Frank Committee to Elect | 12. Mizeur, Heather Citizens For |
| 3. Boston, Carolyn Committee to Elect | 13. Richardson, Byron Friends of |
| 4. Branch, Chanel Citizens for | 14. Robinson, Chris Friends Of |
| 5. Butler, James J. Sr. Friends of | 15. Salling, Johnny Ray Sent Campaign Fund |
| 6. Educators for Progress in District 10 PAC | 16. Schanno, Joseph Russell Friends Of |
| 7. Freed-Collier, Kathryn Citizens for | 17. Somers, John R. Campaign to Elect |
| 8. Kingston, Tim Citizens for | 18. Team Conaway Slate |
| 9. Kittleman, Allan Committee To Elect | 19. Verma, A. (Kris) Friends of |
| 10. Leazier, Jereme Citizens for | 20. Vollmers, Valerie, Friends of |

Mr. DeMarinis noted that 11 requests for waivers of late fees were denied.

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

ADMINISTRATIVE CLOSURES

Mr. DeMarinis presented Friends of Jack Johnson for administrative closure. He explained that the candidate is currently incarcerated, and there has been no account activity since 2011. The Office of the State Prosecutor agrees with the recommendation to close the account.

Mr. McManus made a motion to administratively close this account, and Ms. Owens seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Rebecca Wilson of SAVE Our Votes asked whether the evaluation committee for the new voting system procurement included a member of the public. Ms. Lamone responded that since the procurement process was on-going, no information about the evaluation process could be

provided. Ms. Wilson also asked what steps have been taken to improve election judges' training on setting up and assisting voters with the accessible voting units. Ms. Charlson stated that this information is presented in election judges' training, and she would ask the SBE staff member responsible for election judges' training to respond to Ms. Wilson's question.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

No campaign contributions were disclosed.

SCHEDULING OF NEXT MEETING

The next meeting was scheduled for October 30, 2014, at 2:00 pm.

Ms. Lamone explained that the members of the State Board would be needed to certify voting systems and consider her recommendation of the selected vendor for the new voting system. No additional meetings were scheduled.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the open meeting, and Ms. Owens seconded the motion. Ms. Mack adjourned the meeting at 3:10 pm.

CLOSED MEETING

Ms. Mack called for a motion to close the board meeting under State Government Article, §10-508(a)(8), which permits closing a meeting to consult with staff, consultants, or other individuals about pending or potential litigation. Exception (a)(8) permits a closed session to consult with the Administrator and staff regarding *National Federation of the Blind (NFB) v. Lamone*. The closed session was proposed to discuss the recent appeal of the court's decision in *NFB v. Lamone* lawsuit. Mr. Hogan made a motion to close the meeting, and Ms. Owens seconded the motion. The motion passed unanimously. The closed meeting began at 3:12 pm and was held in Ms. Lamone's office at SBE.

During the closed session, the board members discussed the appeal of the *NFB v. Lamone* decision. In addition to the board members present at the open meeting, Ms. Lamone and Ms. Charlson were present. No actions were taken. The closed meeting adjourned at 3:20 pm.