

State of Maryland 

State Board of Elections Meeting – June 30, 2016

Attendees: David McManus, Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Bobbie S. Mack, Member
Linda H. Lamone, State Administrator
Jeff Darsie, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy for Election Policy
Keith Ross, Assistant Deputy for Project Management
Paul Aumayr, Director, Voting Systems
Erin Perrone, Director, Election Reform and Management
Mary Cramer Wagner, Director, Voter Registration and Petitions
Victorica Smith, Candidacy and Campaign Finance Division

Also Present: Armstead Jones, Election Director, Baltimore City Board of Elections
Katherine Berry, Election Director, Carroll County Board of Elections
Alisha Alexander, Election Director, Prince George's County Board of Elections
Alysoun McLaughlin, Deputy Director, Montgomery County Board of Elections
Amanda La Forge
Dr. Dennis McGrath, University of Baltimore
Bill Murphy, Clear Ballot
Ana Quevedo, Clear Ballot
Mary Kiraly, Montgomery County citizen
Ralph Watkins, League of Women Voters
Holly Joseph
Elizabeth Landry, Frederick County voter
Suzi Kaplan, Montgomery County citizen

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:09 pm and confirmed that a quorum was present. He stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM MAY 19, 2016, MEETING

Mr. Cogan made a motion to ratify the approval of minutes from the May 19, 2016, meeting, and Ms. Mack seconded the motion. The motion passed unanimously.

ADDITIONS TO THE AGENDA – CARROLL COUNTY'S REQUEST TO CHANGE POLLING PLACE

Ms. Duncan stated that the State Board previously approved a request from the Carroll County Board of Elections to move the polling place for precinct 3-1 to the Ebb Valley Elementary School, a school outside of the precinct lines. After this change was approved, the Carroll County Commissioners requested that the Carroll County Board of Elections consider using the Pleasant Valley Fire Hall instead of the Ebb Valley Elementary School. The Carroll County Board of Elections subsequently voted to use the Pleasant Valley Fire Hall, and this request is submitted for State Board approval.

In response to questions, Ms. Berry, the Election Director for the Carroll County Board of Elections, confirmed that the fire hall facility is accessible for voters with disabilities and has

ample parking. The fire hall is also outside of the precinct lines but is used for social events by voters who live in precinct 3-1.

Ms. Mack made a motion to approve the Carroll County Board of Elections' decision to use the Pleasant Valley Fire Hall as the polling place for precinct 3-1, and Mr. Cogan seconded the motion. The motion passed unanimously.

PRESENTATION: POST-ELECTION TABULATION AUDIT REPORT

The members of this post-election tabulation audit project are Amanda La Forge, SBE's lead on this project; Dr. Dennis McGrath, a statistics professor from the University of Baltimore; and Bill Murphy and Ana Maria Quevedo from Clear Ballot, the vendor providing the independent tabulation software.

Ms. Charlson stated that the accuracy of the prior voting system was tested during the pre-election logic and accuracy testing and on election day through parallel testing. With a paper-based voting system, verifying the system's accuracy can be accomplished in different ways. Some states with paper ballots perform a post-election audit of voted ballots, and the Maryland General Assembly has stated its desire for a "post-election tabulation audit" by withholding funds in SBE's FY 17 budget until SBE submits a report on the post-election tabulation audit performed after the 2016 General Election.

Ms. Charlson explained that the new voting system takes a digital image of each scanned ballot and the images can be retrieved and reviewed. Because of this functionality, there are three ways to verify the accuracy of our paper-based voting system – hand count the voted paper ballots, hand count the digital images of the voted ballots, and use independent software to tabulate digital images of the voted ballots. As part of this pilot, Ms. Charlson stated that each option was reviewed and the decision was made to use the digital images of the ballots. Using the digital images means that the paper ballots can be preserved during the audit process – which seems likely to occur before the election is certified – in case there is a recount or challenge to an election and eliminates the risks involved with handling paper ballots.

Ms. La Forge explained that the goal of the pilot was to evaluate the tabulation audit methods that were independent of the current voting system and, based on the experiences of the pilot counties (Carroll and Montgomery Counties), recommend the most effective, accurate and efficient method for use in the 2016 General Election and future elections. The three piloted methods were a risk-limiting ballot level audit, a fixed percentage precinct level audit, and an independent automated audit. These methods are used throughout the country, although jurisdictions with the fixed percentage type audits are looking to move away from this time-consuming audit.

Dr. McGrath explained that a risk limiting ballot audit uses statistics to determine whether an adversary is tampering with the election. With this audit method, the margin of victory is important, as the number of ballot images to tabulate manually increases as the margin of victory tightens. While most elections will not require a large number of ballot images to tally, auditing a close election could require manually tabulating all of the voted ballot images in that contest. Dr. McGrath noted that the audit teams in Carroll and Montgomery Counties took about one minute per ballot image to tally.

Dr. McGrath explained that the fixed percentage precinct audit requires the manual tabulation of all of the voted ballot images in a certain number of randomly selected precincts. With this type of audit, Dr. McGrath noted that it is less likely to discover if an adversary is tampering with the election, but it is a simpler audit to perform. If a large precinct is selected for this audit, the audit process could be time consuming at a critical time in the election process. In response to a question, Dr. McGrath explained that the precincts or ballot images would be randomly selected after the election. These audit methods could be performed either at the local level or State level.

Ms. La Forge explained that the independent automated tabulation software would be used to identify precincts where the voting system tally differs from the independent tabulation software tally. Those precincts where the difference exceeds a to-be-determined minimum threshold would be referred to the local board for further review.

Bill Murphy of Clear Ballot summarized the company's background, approach and work. Clear Ballot's Clear Audit solution uses ballot images generated by the current voting system to re-tabulate the election results and compare its results against the voting system's results. Mr. Murphy noted that software can also be used to identify training needs (e.g., voters in one precinct consistently marking the ballot incorrectly) or scanner issues (e.g., poor image quality can identify a scanner needing maintenance).

Mr. Murphy demonstrated the re-tabulation of Carroll County's ballot images. The software confirmed that the voting system's results were accurate and the differences between the two systems' results are based on different approaches to tallying incorrectly marked ballots. The Clear Audit solution can display images of the marked ovals (ranked by confidence level) and images of the voted ballots. In response to a question, Mr. Murphy stated that, in its work in other states, Clear Audit has not identified accuracy issues but has identified training issues and performance and maintenance issues with scanners.

In response to a question, Ms. Charlson stated that the process for public comment has not yet been determined and that no decisions by the State Board are required. Ms. McLoughlin, Deputy Director of the Montgomery County Board of Elections, expressed her desire to see audits move towards automation as they are more accurate than human tallies. Ms. Berry, Election Director of the Carroll County Board of Elections, shared how a manual tabulation audit would be difficult in a local board with a small number of staff.

BALTIMORE CITY: PLANNING FOR THE 2016 GENERAL ELECTION

Mr. Jones, Election Director for the Baltimore City Board of Elections, provided an update on the City Board's preparation for the 2016 General Election. He explained that strategies to recruit an additional 800 election judges include developing a recruitment postcard and confirming that election judges who served in the primary election will serve in the general election. The election judges' training program will be reviewed and changes from SBE and the local board will be incorporated.

Mr. Jones stated that 1,200 election judges from precincts with issues were asked to attend post-election sessions and complete a survey. The survey asked about the adequacy of the training and where improvements can be made, and the results are being compiled and will be compared with the post-training surveys. In response to a question about why provisional ballots in some

ballots were scanned, Mr. Jones stated that election judges were confused, lacked training or leadership, or lost track of the provisional voter in the process. This allowed a provisional voter to scan his or her voted ballot. There was a discussion about whether the voting room was set up in such a way to prevent provisional voters from scanning their voted ballots. Mr. Jones stated that he would look into whether judges in precincts with a large number of scanned provisional ballots set up the voting room according to the plan.

Additional corrective actions include increasing the number of staff, coordinating with City of Baltimore agencies that provide facilities to ensure that the facilities are open in time for the election judges to prepare the voting room, and explore finding a facility that can house both the Baltimore City Board of Elections' office and warehouse. Educating voters on the new voting process will continue, and distributing posters with a call-in number will support troubleshooting at voting locations.

In response to a question about whether the provisional ballot applications were reviewed and how many were deemed to be ineligible, Mr. Jones confirmed that all applications were reviewed but he did not know how many were ineligible. Ms. Mack suggested created a separate area for provisional voters and acknowledged that it is difficult to identify and manage election judges. Mr. Jones believes that his existing staff can support the call-in number.

Ms. Lamone explained that she created a committee to look at the existing provisional voting process and identify improvements. Mr. Cogan requested that the State Board be kept informed on the number of election judges needed, the number recruited, and the number trained.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

Organization for the Security and Cooperation of Europe (OSCE)

On May 18th, Jared DeMarinis and Paul Aumayr met with four officials from OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR). In accordance with OSCE's mandate to observe elections in participating countries, these officials undertook a Needs Assessment Mission to assess the pre-election environment and preparations for the U.S. elections. The officials were Alexander Shlyk, Deputy Head of the OSCE/ODIHR Election Department, Richard Lappin, OSCE/ODIHR Senior Election Adviser, Radivoje Grujić, OSCE/ODIHR Election Adviser, and Andreas Baker, Chief of the Executive Office of the OSCE Parliamentary Assembly.

Maryland State Bar Association's (MSBA) State and Local Government

On May 19th, Jared DeMarinis spoke at the MSBA's Section of State and Local Government Law Spring Institute on Montgomery County's public financing program. Other speakers were Bob Drummer, Senior Legislative Counsel to the Montgomery County Council, and Phil Andrews, former council member who sponsored the local bill.

Senate Education, Health and Environmental Affairs (EHEA) Committee Briefing

On June 14, 2016, the Senate's EHEA Committee held a briefing on the 2016 Primary Election. Representatives of the Montgomery County Board of Elections and the Baltimore City Board of Elections shared their election experiences and concerns for the 2016 General Election. I also addressed committee members and answered questions. Included in the meeting folder will be the written statement submitted by the Montgomery County Board of Elections.

Maryland Association of Election Officials' (MAEO) Annual Meeting

MAEO hosted its annual meeting June 20th and 21st in Cambridge. While much of the conference focused on best practices and lessons learned from the 2016 Primary Election, other presentations included ways to audit the accuracy of the voting system and information from the United States Postal Service, U.S. Election Assistance Commission (EAC), and the Presidential Commission on Election Administration. Special thanks to Mary Cramer Wagner for her assistance with planning the agenda.

EAC's 2016 State Certification Testing of Voting Systems

On June 20th and 21st, Paul Aumayr attended the 2016 State Certification Testing of Voting Systems National Conference at the Massachusetts Institute of Technology in Cambridge, MA. Over 80 attendees, including local and State election officials, academics, and representatives from the EAC and other concerned organizations, attended.

Federal Election Commission (FEC) Forum

On June 23rd, Jared DeMarinis was invited by Commissioner Weintraub of the FEC to speak on corporate influence in elections. Maryland has permitted corporate contributions and for decades had a controversial "LLC loophole" regarding the attribution. This loophole has now been closed.

2. Election Reform and Management

Provisional Voting Process Improvements

Erin Perrone is working closely with representatives from several local boards of elections to propose recommendations to simplify the provisional ballot process for voters and election judges. The first meeting will be July 12th at the Anne Arundel County Board of Elections.

Election Judges' Workgroup

The Election Judges' Workgroup will reconvene its efforts to improve the election judges' manual for both election day and early voting for the general election. The team will perform a page-by-page review and address the lessons learned from the primary election. Forms and checklists will also be reviewed and revised.

Election Reform & Management Deputy Director – Recruitment Process

Over three days, eleven candidates were interviewed for the Deputy Director of Election Reform & Management position. The interview panel chose Cortnee Bryant to fill the position. She comes to SBE with election experience at the Anne Arundel County Board of Elections where she developed training videos for the election judges in 2012. She also has prior experience with polling place layouts and surveys and ADA accessibility surveys. Cortnee has a Bachelor of Fine Arts in Graphic Design from Appalachian State University and a Masters of Fine Arts in Animation from the Savannah College of Art and Design in Savannah, GA. She will start on Wednesday, July 20th and some of her duties will include developing an election judges' training video program, voter outreach, and ordering ADA supplies for the local boards of elections. We are ecstatic to have her and believe she will be an asset to our team.

3. Voter Registration

MDVOTERS

Release 6.2 is ready for early UAT testing. The release is expected to be put into production the weekend of August 27th.

MVA

MVA provided the following voter registration data for the month of May:

New Registrations: 1,064

Last Name Changes: 235

Address Changes: 2,645

Political Party Changes: 618

Electronic Registration Information Center (ERIC)

ERIC welcomes four new states. Ohio, Wisconsin, West Virginia and Alaska have boosted ERIC's membership to 19 states and the District of Columbia. ERIC's membership now includes: Alaska, Alabama, Colorado, Connecticut, Delaware, Illinois, Louisiana, Maryland, Minnesota, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, Washington, D.C., West Virginia and Wisconsin.

The latest ERIC reports were sent to the local boards for processing. These reports include:

Cross state report: 22,410 records

In-state duplicate report: 382 records

Deceased report: 739 records

In-state update report: 24,845 records

Completed reports are due back by June 30th.

Federal Jury Commissioner

Board member Kelley Howells requested that staff reach out to the federal Jury Commissioner to ascertain whether or not certain information can be shared for list maintenance purposes. Mary Cramer Wagner has contacted various departments at the federal level to no avail. She has also reached out to her contact at the Maryland State Jury Commission and is awaiting a call back. Mary will continue to pursue this issue.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

The statutory deadline for a petition and non-principal political party candidate to file a declaration of intent is the date that candidates are required to file a certificate of candidacy. The statute is arguably ambiguous because primary candidates were required to file their certificates of candidacy by February 3, 2016, while petition candidates must file their certificates of candidacy by August 1, 2016, the date on which their nominating petitions are due. At least three candidates questioned the legality of a February filing deadline and asserted their right to seek ballot access despite not having filed a declaration of intent by that date.

Based upon advice from the Office of the Attorney General, the deadline for petition and non-principal political party candidates to file a declaration of intent is now the first Monday in August. This advice avoids an unconstitutional construction of the statute.

Campaign Finance

On June 6th, Jared DeMarinis and William Colquhoun of the State Ethics Commission met with Richard Tabuteau, Senior Advisor to the Lt. Governor, and Mark Newgent, Board of Public Works Advisor for the Governor, about the contribution disclosure statements for persons doing public business and the role of the procurement officer in the process. Mr. Tabuteau passed this information to the Commission to Modernize State Procurement, which is engaged on this issue. One workgroup suggestion is for procurement staff to be more knowledgeable about these statutory provisions and that notice of these provisions be included in the original solicitation documents and award letter.

On May 31st, the Contribution Disclosure Statement was due for persons doing public business and persons who employ a lobbyist and make applicable contributions. 647 statements were filed. This is an increase from the prior filings.

Enforcement Matters

Friends of Guled Kassim was referred to the Office of the State Prosecutor for theft of campaign funds and candidate control over the campaign funds. The matter is closed, as Mr. Kassim has returned to Somalia.

The Committee to Elect David Maurice Smallwood was referred to the Office of the State Prosecutor for conducting campaign finance activity without a responsible officer.

Title 14 Waiver Requests – Denials

Included in the meeting folder are denied requests for three waivers. This information is provided for informational purposes; no action is needed.

5. Project Management Office (PMO)

Inventory

SBE is currently conducting its 2016 annual inventory of equipment and supplies. All the legacy equipment and supplies located at SBE and in the Central Warehouse have been scanned and counted. The next step is to scan and count the equipment and supplies located in each of the 24 local boards of elections. A team from SBE will visit each of the local boards from July 5th – 15th. After this first phase, there will be the reconciliation phase. These two phases must be completed for to the annual reports that will be submitted to the Department of General Services in August and September.

Election Staffing for the General Election

The PMO is currently working with the staffing contractor and others to improve the election staffing experience during the 2016 General Election. SBE recently held a meeting with the staffing contractor to discuss the issues experienced during the 2016 Primary Election. This meeting generated a comprehensive task list.

SBE Central Warehouse

SBE, working with the Department of General Services, is in the final stages of reducing the size of SBE's Central Warehouse from the current size of about 69,000 sq. ft. to about 45,000 sq. ft. The updated lease based on the reduced space goes into effect July 1, 2016.

New Voting System Replacement (NVSR) Project

All components of the voting system are in lockdown from the 2016 Primary Election. Upon release from lockdown, SBE, the local boards of elections, and ES&S will perform inspections to identify any necessary damage or repairs. After this process, the recharging cycles will begin. This process maintains the batteries of the precinct scanners and ballot marking devices.

NVSR is working with ES&S on a Network Change Management Plan to provide updates to the Certified Network and Election Night Results Network. The plan is in its final stages and the work is scheduled to commence in July.

NVSR's project and quality management personnel are working closely with the Baltimore City Board of Elections' staff to identify processes that can be improved within their warehouse and logistics operations for the 2016 General Election.

6. **Voting Systems**

Post-Election Maintenance

The voting system team and the regional managers have been updating the post-election maintenance plan to reflect the implementation of the new system. This plan details the processes that must be carried out on all the election equipment, including the electronic pollbooks, after the election and once the equipment is released. The regional managers also sought feedback from the local boards of elections and incorporated it into the updated plan, which was distributed last week.

Pollbook Software Update.

ES&S has some minor updates to the electronic pollbook software for the November general election. ES&S released a beta version last week, and it is currently being tested by the team. The final version is due to be released by July 30th. The updates will not result in changes to the interface or require any changes for the election judges.

Additional Equipment for the General Election

SBE has been working with the local boards to determine if additional equipment is desired for the 2016 General Election. Some local boards have identified additional precinct ballot scanners, electronic pollbooks, and early voting network equipment for new early voting centers.

7. **Information Technology**

Queen Anne's County Office Relocation

The Queen Anne's County Local Board of Elections recently relocated to a new office location. The new office location has the warehouse in the same building. Network Maryland (NwMD) provisioned and installed a new data communications circuit for the new office location at 110 Vincit Street, Centreville, MD 21617. SBE's IT Division re-configured the networking device and re-established data connectivity from the new office location to the SBE's three data centers.

8. **2016 Primary Election**

Provisional Voting Data

Ms. Charlson noted that provisional voting data from the 2016 Primary Election was included in the meeting folder.

Certification and Recertification of Election Results

Mr. Darsie stated that it was reported to him that after the Montgomery County Board of Elections certified its election, they discovered that some absentee ballots were not scanned during the canvassing. The ballots were scanned, results updated, and two officers of the Montgomery County Board of Elections signed the certification documents. Ms. Duncan explained that SBE staff members provided technical assistance on how to update the results and guidance on the process of printing and signing the certification document. Mr. Darsie noted that while SBE issues a canvassing script, there is no specific direction to take a vote to certify the election. Ms. Charlson will revise the script to be clear that a full vote of the local board of canvassers is required to certify the election and that any ballots that were not canvassed before certification must be canvassed during a public meeting of the local board of canvassers.

9. Litigation

Ms. Lamone stated that she signed an agreement for significant attorneys' fees and costs from the *National Federation of the Blind* litigation. The Board of Public Works must approve the settlement agreement.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie provided the following report.

1. William T. Newton, a candidate in the Republican Party primary for the 7th Congressional District, has filed a petition for mandamus in the Circuit Court for Anne Arundel County seeking to compel a new election based on reported voting irregularities in Baltimore City. *Newton v. Lamone*, Case No. C-02-CV-16-001792 (Cir. Ct., Anne Arundel Co., Md.). A response to the petition will be filed on or before July 13, 2016, though Mr. Newton has not yet properly served the summons or complaint.
2. The Attorney General's Office has advised the State Board that the deadline for unaffiliated and minor party candidates to file a declaration of intent to seek nomination by petition is August 1, 2016, rather than February 3, 2016, to avoid an unconstitutional construction of the statute. In 2015, that deadline was changed from July 1 to "the date and time specified for a candidate to file a certificate of candidacy." Ch. 332, 2015 Laws of Maryland. In 1980, the Court of Appeals for the Fourth Circuit invalidated the predecessor statute because its March filing deadline was unconstitutionally early. *Anderson v. Morris*, 632 F.2d 55 (4th Cir. 1980) (holding provisions of former Article 33, § 7-1 unconstitutional). A copy of the advice memorandum will be provided to members of the State Board.

APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS

Ms. Smith presented requests from 24 committees to waive late fees incurred by the committees. The requesting committees are:

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|---|---|
| 1. Balaz, Steven Friends Of | 13. Moore, Tom Friends of |
| 2. Carson, Wally Friends of | 14. Njuhigu, (Octavia) Committee to Elect Rev. O.D. |
| 3. Chandler, Joseph (J.C.) Dr. Friends of | 15. Oliver, Shanetta Friends Of |
| 4. Davis, Lorrie R. For Baltimore Citizens | 16. Optometric Association PAC MD |
| 5. Daxon, Eric, Friends of | 17. Ramos, Odette Friends of |
| 6. DiMaggio, Helen (Annette), Friends of | 18. Realtors PAC, Md. (MD RPAC) |
| 7. Dudley, Jennifer for Baltimore | 19. Sarbanes, Spyros (Jimmy), Citizens for |
| 8. Grimes, Wanda Kennieth Citizens for | 20. Short, David Friends of |
| 9. Guessford, Michael (Mike) for Board of Education | 21. Shudofsky, Aryeh for BOE |
| 10. Harris, Jerome Citizens for | 22. Strott, Connie Friends of |
| 11. Henry, Tom Citizens for | 23. Trotta, Christina Friends of |
| 12. Jefferson, Darryl A. Sr. Citizens For | 24. Wright, Joseph L. Friends Of |

Ms. Howells made a motion to grant the requests for waivers of late fees, and Ms. Mack seconded the motion. The motion passed unanimously.

APPROVAL OF LBE BY-LAWS

Ms. Charlson presented by-laws for the St. Mary's County Board of Elections. She recommended approving the by-laws as the local board adopted the requested changes.

Ms. Mack made a motion to approve the by-laws for the St. Mary's Board of Elections, and Ms. Howells seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Mr. Cogan noted that voters may not want to disclose for whom they have voted and that the bedrock of democracy is the ability to vote a secret ballot. He noted that with the prior voting system, voters could observe other voter's ballot selections as he walked by the voting units. With the new voting system, the ballot marking process is more secret but the casting ballot process can expose voters' selections. He asked SBE staff to work with the local boards to create ways to ensure that voters' ballots are secret when scanned.

Ms. Lamone recognized Bobbie Mack for her twelve years of service to the State Board of Elections and eight plus years to the Prince George's County Board of Elections. Mr. McManus presented a citation from Governor Hogan and Ms. Lamone presented a resolution from the Senate of Maryland. Ms. Duncan stated that although Ms. Alexander, the Election Director for the Prince George's County Board of Elections, had to leave the meeting, she wanted to recognize Ms. Mack's service to the Prince George's County Board of Elections. Ms. Mack thanked everyone for the recognition and stated that she was amazed by the work and dedication in Maryland's election community and the desire to ensure that problems are addressed.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan reported that he gave \$300 to the National Republican Senatorial Committee, \$100 to the Harris for Congress committee, \$50 for Hoffman for Sheriff, and \$50 to the Maryland GOP.

Ms. Howells reported that she gave \$15 to the Southern Prince George's County Republican Club.

CONFIRM NEXT MEETING

The next meeting is scheduled for Thursday, July 28, 2016, at 2 pm.

ADJOURNMENT

Ms. Mack made a motion to adjourn the meeting. Mr. McManus adjourned the meeting at 4:22 pm.