

State of Maryland 
State Board of Elections Meeting August 28, 2008

Attendees:

- Robert L. Walker, Chairman
- Bobbie S. Mack, Vice Chairman
- Andrew V. Jezic, Member
- David McManus, Member
- Charles E. Thomann, Member
- Ross Goldstein, Deputy Administrator
- Mark Davis, Assistant Attorney General
- Donna Duncan, Election Management Director
- Jared DeMarinis, Candidacy and Campaign Finance Director
- Michael Kortum, Chief Information Officer
- Nikki Trella, Election Reform Director
- Mary Wagner, Voter Registration Director
- Paul Aumayr, Voting System Project Manager
- Mary Heath, Election Reform Division
- Rick Urps, Election Reform Division
- John Clark, MDVOTERS Project Manager
- Roger Stitt, Voter Registration Division
- Janet Smith, Voter Registration Division

Also Present:

- Gail Carter, Carroll County Board of Elections
- Paula Troxell, Carroll County Board of Elections
- Tracy Dickerson, Charles County Board of Elections
- Brittani Thomas, Queen Anne's County Board of Elections
- Bob Lyon, WBAL-TV
- Dave Collins, WBAL-TV
- Dale Livingston, Harford County Board of Elections
- Jason Fischer, WBFF
- John Rydell, WBFF
- Shawn Larson, Harford County Board of Elections
- Bradford Burdette, Harford County Board of Elections
- Lloyd Fox, Baltimore Sun
- Mary DePelteau, Maryland Association of Election Officials
- Guy Mickley, Maryland Association of Election Officials
- Betty Nordaas, Maryland Association of Election Officials
- Angel Lavin, Venable
- John Steiroff, Venable
- Joe Torre, Anne Arundel County Board of Elections
- David Garreis, Anne Arundel County Board of Elections
- Brian Moe, Deputy Secretary of State
- William Edelstein, Maryland Save Our Votes
- Sara Harris, Montgomery County Board of Elections
- Kim Atkins, Harford County Board of Elections
- Brianne Carter, WJLA/News Channel 8
- Michael Berla, Save Our Votes – Maryland
- Alisha Alexander, Prince George's County Board of Elections
- Scott Arceneaux, Marylanders United to Stop Slots
- Anthony Gutierrez, Wicomico County Board of Elections
- David Weaver, Comptroller's Office
- Holly Joseph
- Abigail Goldman, Baltimore City Board of Elections
- Neal Jones, Baltimore City Board of Elections
- Stan Boyd, Save Our Votes
- Liam Farrell, Capital
- Gadi Dechle, Baltimore Sun
- Armstead Jones, Baltimore City Board of Elections
- Lisa Rein, Washington Post

Gene Kuleta, Metro Notes, WAMU
Brenda Burch, St. Mary's County Board of Elections
Susan Julian, St. Mary's County Board of Elections
Kaitlyn Hart, WBAL Radio
Robert Lang, WBAL Radio
Daneen Banks, Prince George's County Board of Elections

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:31 p.m.

APPROVAL OF THE JULY 24th BOARD MEETING MINUTES

The minutes of the July 24, 2008, board meeting were presented for approval. Ms. Mack made a motion to approve the minutes, and Mr. Thomann seconded the motion. The minutes were approved unanimously.

ADDITIONS TO THE AGENDA

Chairman Walker stated that there had been a request by Scott Arceneaux of *Marylanders United to Stop Slots* to address the Board regarding the ballot language submitted by the Secretary of State's Office for Chapter 5 of the 2007 Special Session (Question 2 - Video Lottery Terminals – Authorization and Limitations). A representative from the Secretary of State's office was also in attendance to respond to this issue.

Scott Arceneaux stated that his group objects to the ballot language for Question 2 that had been submitted and certified by the Secretary of State to the State Board of Elections. Mr. Arceneaux argued that the ballot language is misleading because it misrepresents how revenues from video lottery terminals would be spent. Specifically, the ballot language states that revenues will be for education related purposes. The ballot language does not mention the fact that revenues will also be going to support the Maryland horse racing industry and the gambling licensees. Mr. Arceneaux acknowledged that the reason for this was that the other revenue uses are not specified in the constitutional amendment. Instead, they are specified in supporting legislation. Nonetheless, Mr. Arceneaux argued that fairness dictates that other uses of video lottery revenue should be included in the ballot language. Finally, Mr. Arceneaux stated that the Board was the "final umpire" in this process and should act to ensure a fair election.

Brian Moe, Deputy Secretary of State, read a prepared statement from Secretary of State John McDonough. Secretary McDonough's statement outlined the process he followed in developing the ballot language. He contacted former Secretary of State John T. Willis about the history of constitutional amendments and the process for drafting ballot language. Mr. Willis' advice was to review prior high profile amendments, which Secretary McDonough did. The best process gleaned from reviewing prior processes was to seek legal counsel from the Office of the Attorney General and to adhere as strictly as possible to both the exact words of the constitutional amendment as adopted by the General Assembly as well as the chronology of the various elements of the amendment within its text. With one exception, Secretary McDonough noted that he strictly followed the above process. The one exception was using the term, "Slots" in the ballot language even though that term is not used in the constitutional amendment. Finally, Secretary McDonough acknowledged that he did not include language as to certain expenditures for things other than education since those were not provided for in the constitutional amendment and his statutory duty is to condense the amendment, not other legislation.

Chairman Walker asked Mark Davis to provide a legal analysis on what actions the Board can take in response to this issue. Mr. Davis informed the Board that the Election Law Article is clear that the Secretary of State prepares and certifies the ballot language to the State Board. The State Board has no authority to reject, alter, or modify the language submitted by the Secretary of State. Accordingly, there is no relief that the Board could provide to Mr. Arceneaux if they were inclined to do so. Finally, Mr. Davis noted that a lawsuit had been filed in the Anne Arundel County Circuit Court by another group that is similarly challenging the ballot language.

ADMINISTRATOR'S REPORT

Mr. Goldstein provided the Administrator's Report.

1. Announcements

Elizabeth del Castillo, the agency's budget officer, resigned her position as of August 12th. Interviews for a replacement were conducted, and a new budget officer, Ken Thompson currently with the Comptroller's Office, has been selected. The new budget officer begins on September 10, 2008.

2. Meetings and Important Dates

Election Directors' Meeting

On Wednesday, August 13th, SBE held an Election Directors' meeting. At this meeting, the following topics were discussed: an overview of the software upgrade for the electronic pollbooks, a summary of new procedures for election judges (searching in the electronic pollbooks and extended hours voting), upcoming activities in MDVOTERS, delivery schedule and acceptance testing for additional electronic pollbooks and

voting units, an update on the procurement of the new voting system, ballot printing, and warehousing needs for 2009. After the Directors' meeting, there was a meeting to discuss how to best manage lines at the polls. The representatives of the local boards who stayed for this discussion highlighted their efforts to educate voters before they come to vote. There was also discussion about how best to respond on election day to lines at the polls.

3. Election Management and Reform

SBE's efforts to recruit election judges continue to be successful. In July, Mary Heath received 388 forms from individuals indicating an interest in serving as an election judge. Approximately 45% of these individuals noted that they heard about serving as an election judge from the Internet and 30% from friends and family. In response to a survey about election judge recruitment, most local boards have recruited most of the election judges they need, and eleven counties (Allegheny, Anne Arundel, Cecil, Charles, Harford, Howard, Kent, Montgomery, Queen Anne's, St. Mary's, and Worcester Counties) are offering administrative leave for county employees to serve as election judges. (Two counties – Baltimore County and Calvert County – are awaiting a response from the County Executive and County Commissioners, respectively.) Mr. Goldstein reported that Governor O'Malley has offered administrative leave for State employees who serve as an election judge.

Absentee voting supplies have been shipped to the local boards of elections. Existing inventory of provisional ballot applications should be shipped shortly, and additional applications should be ready to be shipped in mid-September. Rick Urps and Donna Wiltshire are in the process of purchasing (with federal funds) polling place items for the local boards.

Mr. Goldstein reported that the training of election judges has begun. The larger jurisdictions have begun training, and Mr. Urps is planning on observing trainings in many of the counties.

4. Candidacy and Campaign Finance

August 4, 2008, was the deadline for non-principal political party candidates and petition candidates to file their remaining required documents to appear on the Presidential General Election ballot. Several petition candidates failed to meet the deadline. Additionally, August 4th was the deadline for new political parties to submit their petitions to be recognized for the November general election. The Independent Party and Constitution Party both filed petitions.

On August 5, 2008, the semi-annual Contribution Disclosure Form covering the period from January 1st to June 30th was due. A person who does business with the State involving consideration of \$100,000 or more and makes campaign contributions greater than \$500 to a candidate or a person who provides lobbyist compensation and makes campaign contributions greater than \$500 to a candidate is required to file this form. The Candidacy and Campaign Finance Division received over 200 disclosure forms from qualifying persons.

Ruth Maynard completed auditing all of the 2007 Baltimore City election-related campaign finance reports. Deficiency notices were mailed to the chairmen and treasurers of the political committee. The committees have until September 26, 2008, to submit amended campaign finance reports otherwise they may be fined.

5. Voter Registration

New Party Petitions

The Voter Registration Division is working with local boards of elections in using MDVOTERS to verify the two new political party petitions.

Hardware for Citrix Licenses

Work continues at the Annapolis and Cumberland datacenters, installing hardware that will provide 100 more of the Citrix licenses needed to access MDVOTERS. The increase in Citrix licenses will be important to our local boards who hire temporary staff to meet the major increase in voter registration that occurs during an election year. The efforts of Saber and SIDUS, our MDVOTERS' IT contractors, have been crucial to completing this task.

Voter Merge

Voter Registration Division has opened the voter merge function in MDVOTERS to the local boards. This powerful tool is used under controlled conditions to clean up duplicate registrations in MDVOTERS. Only trained and authorized persons are allowed to merge voter records, and an audit trail is kept of the actions taken.

MVA letters

SBE and MVA have sent out an additional 29,000 letters to voters to verify their registration data. Mr. Goldstein explained that these letters are being sent to individuals who indicated an interest in registering to vote or

updating their voter information during a transaction at MVA but the information is not reflected in MDVOTERS. The response to this program has been overwhelmingly positive and should reduce the number of provisional ballots that will need to be canvassed by the local boards

MDVOTERS Ad Hoc Reporting Project

The Voter Registration Division is looking forward to implementing an ad hoc reporting capability for MDVOTERS in September. The project calls for creating a separate "mirrored" database of MDVOTERS data, and training of ten SBE users on "Business Objects" software. With the ad hoc database and reporting software at hand, we will be able to respond more efficiently to ad hoc requests for data or one-time reports from external parties and our local boards. Special recognition goes to Stacey Johnson, who served as Project Manager for Ad Hoc Reporting, and Ms. Wiltshire for her support in identifying the equipment and training vendors. In response to a question from Ms. Mack, Mary Wagner reported that the ad hoc reporting capability will initially be limited to SBE because of software licensing issues.

Provisional Voting

During the last several months, staff has been working on writing a comprehensive provisional voting manual. This manual includes instructions on retrieving the provisional ballot bag the day after the election, processing provisional ballot applications in MDVOTERS, conducting the provisional canvass, and reconciling provisional voting data. The draft manual was distributed to six local boards of elections for review and comment, with the final manual ready for statewide distribution by mid- September. Trainings will be conducted on the manual in September and October.

6. Voting Systems

Preparations for the 2008 Election

The 745 voting units that are being leased to 11 LBEs have been shipped to them, and acceptance testing of these units has begun. Despite being leased, rather than bought, these touchscreens are still subject to the same acceptance testing procedures as all the others in the State, prior to being used for the election.

The task of changing the cryptographic keys for the voting system has been completed for the 2008 General Election. This process is undertaken before every election as a part of the overall voting system security.

Electronic Pollbook

Pre-release version 2.1.7.3 of the ExpressPoll software has been provided to SBE for evaluation and testing. This version has several enhancements that were requested by the State for the purpose of speeding voter check-in, including:

- When a user enters "State" search mode, the program now automatically returns to "Precinct" search mode when either a ballot is issued or the "Clear All" button is tapped.
- Name search fields are now automatically cleared after a ballot is issued, and the user is returned to a blank data entry screen (with no voter roster showing).
- Only characters A-Z can now be entered in Last Name and First Name fields. The Middle Initial field will accept A-Z or space. Keyboard characters (i.e. numbers, apostrophes and hyphens) are disabled when user is in "Find Voter by Name." (Note: if these characters are present in the voter's name in the VR system, they are printed on the VAC, and displayed in the Voter Record "Identification" tab.)

SBE has performed extensive testing on this software version, and an "election simulation" testing session was conducted at the Premier facility on August 14th and 15th. There were 3 precincts set up to simulate a 5-pollbook, a 3-pollbook and a 2-pollbook precinct. Representatives from 7 LBEs participated in this effort. The testing has uncovered the need for a correction before the software is deployed. The target date for a final release is September 4th.

Municipal Elections

During this reporting period electronic pollbooks were used in 2 municipal elections. There were no serious hardware or data-related problems reported.

Additional Electronic Pollbooks

The Board of Public Works approved the acquisition of an additional 458 electronic pollbooks in preparation for the November election. The electronic pollbooks have been delivered to the 15 counties, and hardware acceptance testing is underway.

Training

SBE has provided the LBEs with a statewide training database and scripts to be followed for voter lookup training.

Ballots

In an effort to complete the ballot development process sooner and allow more time for the LBEs to program voting units, arrangements were made to have the majority of the audio ballot recorded ahead of schedule. Following the ballot question certification on Monday, August 18, 2008, all ballot information except the names of the vice-presidential candidates was available. Therefore, we asked both Premier and CSC to advance their schedules to perform an initial ballot data export on Tuesday, August 19th. Natasha Walker worked closely with the contractors to develop the ballots for each county. Studio recording time was secured and the audio files are to be returned in time for us to provide the LBEs with a complete ballot database as soon as possible after the vice presidential candidates are certified.

7. Information Technology

Mr. Goldstein reported that the IT Division provided extensive support in planning for and implementation of the Citrix application upgrade used for MDVOTERS access and additional technical assistance to the national voting statistics/XML project. He noted that Maryland was the first state to provide information for this project. The IT Division also visited 17 LBEs in the last month and will begin the annual security and disaster recovery assessments.

8. Updates from Prior Meeting

The new voting system procurement is proceeding. The draft solicitation is being reviewed by the Department of Information Technology (DoIT). After the DoIT review, it will be reviewed by the Department of Legislative Services and then will be ready to be released.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Davis reported that there was a challenge to the decision of Montgomery County Board of Elections that petitioners had presented a sufficient number of signatures to take a County Council bill outlawing gender identity discrimination to referendum in the November general election. The Civil Division of the Attorney General's office is considering filing an amicus brief to assist the court's consideration of the issues.

Mr. Davis also reported that there is a challenge to the City of Cumberland's refusal to place on the ballot their petition for an amendment to the city charter providing for collective bargaining and binding arbitration. Plaintiffs seek a preliminary injunction ordering that the question be placed on the ballot. The Allegany County Board and SBE have been named as parties. The State will move to dismiss the lawsuit against them.

Mr. Walker asked whether these cases and other that will impact election preparations will be expedited. Mr. Davis responded that the courts generally always expedite review of election cases.

DISCUSSION – PLANNING FOR LINES AT THE POLLS

William Edelstein of SaveourVotes.org was invited to address the Board regarding his proposed plan for addressing lines at the polls. Dr. Edelstein stated that lines at the polls had occurred in past elections and that given the fact that there were two statewide questions and numerous local questions, it is reasonable to assume that lines will occur in this election. Dr. Edelstein went on to argue that there were lines in 2004 when there was only a 78% turnout. This election will likely see a higher turnout. Some voters cannot wait on long lines due to physical limitations or work requirements. Accordingly, Dr. Edelstein argues that long lines will lead to disenfranchisement. To remedy this, Dr. Edelstein proposes using the paper ballots that are currently being deployed to the polling places as part of SBE's contingency plan. In other words, use the paper backup whenever there is a line, not just because all voting units are not functioning,

Mr. McManus pointed out that election officials have taken steps to plan for lines at the polls. Specifically, they have secured additional equipment and will provide public information about the ideal times for voting and ballot language to voters while they are waiting in line. Mr. McManus then asked Dr. Edelstein whether paper ballots would be necessary if these steps are effective. Dr. Edelstein responded that while he did not feel those steps would be sufficient, he did concede that if they work, the paper ballot plan would not be necessary.

Ms. Mack asked what would constitute a long line. Dr. Edelstein reported that this would be a determination of the Board. However, he recommended that anything over 45 minutes would constitute a long line and justify the use of paper ballots. He then provided suggestions for how election judges would make the determination of the length of the line.

Guy Mickley, president of the Maryland Association of Election Officials, was then invited to respond to the paper ballot plan presented by Dr. Edelstein. Mr. Mickley pointed out various implementation issues with the proposed plan. First, in order to be in compliance with the Help America Vote Act, a voter outreach plan would have to be implemented. This is especially important given the fact that several large jurisdictions in the State have never used optical scan ballots (except for absentee and provisional voting). Putting a new and unfamiliar voting method in the polling place will lead to voter confusion and improperly cast ballots (including over-votes and under-votes). Next, Mr. Mickley pointed out that many polling places in the State simply do not have the physical space to accommodate an additional method of voting. Mr.

Mickley also stated that creating last minute new procedures will cause confusion among election judges. Mr. Mickley also questioned where the funding to implement the paper ballot plan would be obtained. In addition, Mr. Mickley cautioned that the paper ballot plan may not even eliminate lines – especially if the source of the line is at the voter check-in stage. Finally, Mr. Mickley noted that there simply was not time to create the necessary security procedures that should accompany the use of paper ballots in polling places.

APPROVAL OF POLLING PLACE CHANGES

Ms. Duncan presented two requests from the Harford County Board of Elections to change the location of a polling place.

1. Move the polling place in district/precinct 01-04 from Joppatowne Elementary School to Joppatowne High School because the elementary school is undergoing major renovations. Ms. Mack made a motion to approve the polling place change, and Mr. McManus seconded the motion. The motion passed unanimously.
2. Move the polling place in district/precinct 03-16 from Wakefield Elementary School to Ring Factory Elementary School because Wakefield Elementary School is undergoing major renovations. Mr. McManus made a motion to approve the polling place change, and Mr. Thomann seconded the motion. The motion passed unanimously.

APPROVAL OF LOCAL BOARD BY-LAWS

Mr. Goldstein reported that additional local board by-laws have been received for State Board approval. The board of elections for Kent, Talbot, and Cecil Counties submitted bylaws that were consistent with the model by-laws. Queen Anne's County Board resubmitted their by-laws which were originally not approved by the State Board. The first version was not approved since they improperly gave the board the authority to hire and discharge staff, which is inconsistent with the requirements of State law. The by-laws were corrected to indicate that the election director had the authority to hire and discharge staff. Mr. Goldstein recommended that the Board approve all of the by-laws. Ms. Mack made a motion to accept the by-laws submitted by the four local boards of elections, and Mr. McManus seconded the motion. The motion passed unanimously.

APPROVAL OF STATE BY-LAWS

Chairman Walker asked Dave McManus to explain his proposed changes to the draft by-laws submitted by staff. First, Mr. McManus addressed the issue of what constitutes a supermajority when the board does not have 5 members. Mr. Jezic recommended that when the Board is made up of four members and three of the four are of the same party, a supermajority means the entire Board. The members noted their agreement with this proposal.

Next, Mr. McManus suggested changing the requirement that the Chairman be the "sole" spokesperson for the Board to the "primary" spokesperson. Mr. McManus stated that this was necessary in recognition of the fact that at certain times members will be asked to respond to questions. The members noted their agreement with this proposal.

Mr. McManus then proposed returning to prior practice and make the vice chairman a member of the minority party. However, Mr. McManus stated that he did not want this to go into effect presently since he did not desire to see Ms. Mack removed from the position. The members noted their agreement with this proposal.

Mr. McManus then noted that he agreed with the provision allowing for phone participation. Bobbie Mack noted that she was concerned that this could be abused and that members should try to attend in person. Mr. Goldstein suggested adding the requirement that phone participation has to be approved by the Chairman. The members noted their agreement with this proposal.

Finally, the Board discussed the political activity section. Mr. Goldstein explained that the draft contained three versions of the political activity section. Version one presented a middle ground whereby members could engage in political activity but had to disclose it. The second version presented a restrictive approach which prohibited all political activity. The final version presented a least restrictive approach that allowed political activity and did not require disclosure. The members discussed these options, but decided to table the discussion until the next meeting.

REGULATIONS – PROPOSED AND FINAL

Nikki Trella presented for final adoption changes to Subtitles 02 (Chapters 01 – 03), 03 (Chapters 01 and 02), 04 (Chapters 01 – 03), 09 (Chapters 01 and 05 – 07), and 10 (Chapters 01, 12, 13, 21, 22 and 31). Ms. Trella noted that the proposed changes were published in the Maryland Register and that no public comment was received. Ms. Mack made a motion to adopt these changes as final, and Mr. Thomann seconded the motion. The motion passed unanimously.

Ms. Trella presented as changes to Chapters 01 and 05 of Subtitle 01 and Chapters 02, 04, 05, and 06 of Subtitle 12 for adoption as proposed and emergency regulations. Ms. Mack made a motion to adopt as proposed and emergency regulations the changes to Subtitle 01, and Mr. McManus seconded the motion. The motion passed unanimously.

In response to a question, Ms. Trella stated that the proposed changes will not have any significant impact on the local boards and will likely ease some of the administrative burdens of conducting a recount. Mr. Thomann made a motion to adopt as proposed and emergency regulations the changes to Subtitle 12, and Ms. Mack seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

Mr. Goldstein explained the process for submitting departmental legislation. In response to a question from Mr. Walker, Mr. Goldstein stated SBE had received an extension on the deadline to submit proposals for departmental legislation until September 12th. Mr. Goldstein summarized the nine proposals:

- Proposal #1 – technical bill for all non-campaign finance related changes
- Proposal #2 – technical bill for campaign finance changes
- Proposal #3 – candidate names
- Proposal #4 – appointment and structure of local boards of elections
- Proposal #5 – election judges
- Proposal #6 – campaign finance fees
- Proposal #7 – political party petitions
- Proposal #8 – deadline to challenge the eligibility of a candidate
- Proposal #9 – liability for authorized political committees

After discussing proposal #7 and the impact of this legislation on currently recognized parties, Mr. McManus made a motion to remove this proposal from the departmental legislation packet, and Mr. Jezic seconded the motion. The motion passed 4-1, with Ms. Mack voting against the motion. Mr. Thomann made a motion to approve the remaining proposals, and the motion passed unanimously.

SCHEDULE FOR THE AUGUST MEETING

Chairman Walker stated that the next meeting would be held on September 25, 2008, at 2:30 p.m.

ADJOURNMENT

Mr. Walker asked for a motion to adjourn. Ms. Mack made a motion to adjourn the meeting, and Mr. Thomann seconded the motion. The motion passed unanimously. The meeting adjourned at 4:22 p.m.