

State of Maryland

State Board of Elections' Meeting Minutes – September 2015

Attendees: David McManus, Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Bobbie Mack, Member
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 of Voting Systems
Jared DeMarinis, Director of Candidacy and Campaign Finance
Mary Cramer Wagner, Director, Voter Registration
Stacey Johnson, MDVOTERS Project Manager
Sylvia Brown, Director of Human Resources

Also Present: Steve Galloway, NVSR Project Team
Rachel Rachfal, NVSR Project Team
Lois Barrance, NVSR Project Team
Ralph Watkins, League of Women Voters
Rebecca Wilson, SAVE Our Votes
Lynn Garland
Mary Ann Keeffe, Montgomery County Board of Elections
Holly Joseph
Mary Kiraly

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:02 pm and confirmed that there was a quorum. Mr. McManus stated that the meeting was being recorded and explained the process for an individual to address the State Board of Elections.

RATIFICATION OF MINUTES FROM JULY 2015 MEETING

Ms. Mack made a motion to ratify the approval of minutes from the August 2015 meeting, and Ms. Howells seconded the motion. The motion passed unanimously.

ADMINISTRATOR'S REPORT

Ms. Charlson introduced Sylvia Brown, SBE's new Director of Human Resources and welcomed her to SBE.

1. Announcements & Important Meetings

Congratulations

The Carroll County Board of Elections recently selected Katie Berry as its new Election Director. Ms. Berry has worked at the Carroll County Board of Elections for several years, including when she was a college student at McDaniel College. We look forward to working with Ms. Berry as she assumes her new role.

Election Directors' Meetings

A summary of the August 25th Election Directors' meeting was included in the meeting folder. Because of various trainings, an Election Directors' meeting in September could not be scheduled. The next Election Directors' meeting is scheduled for October 1st.

2. Election Reform and Management

Voter Education

Last week, we learned that the Department of Budget and Management (DBM) will be using SBE's funds for voter outreach to offset budget cuts in other State agencies. A letter from Secretary Brinkley outlining this plan was included in the board meeting folder. This action means that SBE no longer has general funds for voter outreach. SBE's DBM budget analyst has indicated that we can submit a FY2017 request for voter education, but it must be very small and there is no guarantee that they will be able to find funds.

Mr. McManus stated that SBE and the local boards could generate press coverage and continue to hold demonstrations of the new voting system. In response to a question about public service announcements, Ms. Charlson explained that the announcements must be produced and free public service announcements typically run in the middle of the night. SBE's prior experience with public service announcements was successful because SBE paid for some time slots and the media outlet added some free slots. In response to a comment from Ms. Mack about lines, Ms. Charlson explained that lines will be likely as the election judges will need to educate voters about how to vote with the new voting system.

The Communications Workgroup met on September 16th to review several documents. The "Communications Toolkit" is designed to help the local boards use social media to promote the new voting system and publicize election-related deadlines. The other document currently under review provides guidance on conducting public demonstrations of the new equipment.

In November, Rick Urps will attend the National Federation for the Blind of Maryland's statewide convention to demonstrate the ExpressVote ballot marking device for conference attendees.

The Election Judges Workgroup continues to meet on a weekly basis to refine the election judges' manuals for early voting and election day. The workgroup is also working on election day forms, reports, training curricula, and check lists. A subcommittee of the workgroup is meeting weekly to create a manual for same day voter registration and address changes during early voting.

Same Day Registration & Address Change During Early Voting - Trainings

Ms. Charlson conducted three of the four local board trainings on same day registration and address changes. The final training will be on September 29th at the Caroline County Board of Elections. The training covers how SBE will identify eligible but not registered voters and includes flow charts showing various voter scenarios and instructions on how to canvass provisional ballot applications. Special thanks to Caroline and Washington Counties for hosting two of the trainings.

3. Voter Registration

Statewide Voter Registration Database (MDVOTERS)

The mock election for software release 5.9 began Friday, September 24th, and the release will move into production on October 5th. GoTo meeting trainings for the local boards will be held October 5th - 7th. This release will include candidacy reports, same day registration and address changes, and general upgrades for the 2016 election.

Joint Application Design sessions (JAD)

SBE conducted the annual JAD session from September 15th - 17th. Once a year, we hold these sessions to prioritize outstanding issues and design new features for MDVOTERS. Thank you to all the local board and SBE staff that made these sessions a success.

MVA State Stat

Each month, SBE provides MVA with the number of registration-related transactions attributed to MVA. MVA includes this information in its monthly State Stat report. The registration-related transactions for August 2015 are:

New Registrations - 15,270
Address Changes - 26,917

Last Name Changes - 2,931
Political Party Changes - 5,090

Electronic Registration Information Center (ERIC)

The local boards are currently processing the latest ERIC report and must submit their results by September 30th. The results of this file will be included in the next Administrator's report. This report does not contain information from ERIC's newest member, Rhode Island.

Presentation to the Anne Arundel County Board of Elections Board Members

Ms. Wagner was asked to meet with the members of the Anne Arundel County Board of Elections to discuss list maintenance and Maryland's participation in the ERIC program. A demonstration of MDVOTERS was also provided. The board members asked many questions. Thank you to Joe Torre, David Garreis and their board members for the kind invitation.

The Wicomico County Board of Elections has invited Ms. Wagner to their next board meeting, most likely in November.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

As of September 24, 2015, 39 candidates have filed at SBE for the 2016 Presidential Election.

Campaign Finance

On August 31st, the Contribution Disclosure Statement was due for persons doing public business and/or employing a lobbyist. The entity must disclose cumulative contributions of \$500 or more to a single candidate or officeholder in the reporting period. The CCF Division has received over 450 filings, the most filings so far. The next filing is due on November 30th. Previously, SBE received filings from about 150-200 entities.

Before the next filing of the Contribution Disclosure Statement, the CCF Division will send a mass email to businesses registered with the Secretary of State's office about the possible need to register and file reports with SBE. The registration and reporting requirements managed by the Office of Secretary of State are different from the requirements managed by SBE. The threshold to file with the Office of the Secretary of State is lower than the threshold to file with SBE. About 1300 businesses file with the Office of the Secretary of State.

On September 17th, Mr. DeMarinis presented to the State's Senior Procurement Advisory Group members the new requirements for persons doing public business. This organization represents procurement officers from over 100 State agencies. Over 100 people attended Mr. DeMarinis' presentation.

On September 29th, Mr. DeMarinis will hold an online training on MD CRIS. The training will focus on data entry, returned contributions, filing reports, and updating the registration page. The registration for this training is already full, and two other trainings will be offered in October.

On October 5th, Mr. DeMarinis will attend a Montgomery County Public Election Funding Committee meeting to help budget the administrative and programming costs for public funding of elections.

Enforcement

The Audit and Enforcement Unit is in the process of reviewing slate committee memberships. Effective January 1, 2015, slate membership is restricted to a candidate that has filed a certificate of candidacy or an incumbent if the deadline for filing the certificate of candidacy has not passed.

5. Project Management Office (PMO)

New Voting System Replacement Project (NVSR)

SBE continues its weekly GoToWebinars with the Election Directors and Deputy Directors to give updated statuses and next steps on this and related projects and answer the questions.

The NVSR project team completed integrating into the NVSR master project schedule the schedules of many sub-projects. This helps ensure that tasks are tracked and executed as expected.

Significant detailed work is taking place to ensure all the equipment expected matches the equipment received. This includes cross-checking serial numbers and is needed for insurance purposes.

Mock Election

The statewide mock election is scheduled to begin on Monday, October 19th and will involve SBE and the 24 local boards. This provides an opportunity for State and local election officials to run a statewide election, test many functions, and give everyone a better understanding of and comfort level with the new voting system.

Over the past few weeks, SBE and the local boards have focused on planning the mock election, including finalizing the scope of the mock election, documentation, task scheduling, and logistics. At the end of the mock election, there will be a Lessons Learned and Issues Identified session(s) to identify processes and documentation needing further work before the 2016 Primary Election. For those functions that are not included in the mock election, separate testing will be performed at a later time. In response to a question, Mr. Ross explained that all election functions will be tested before the 2016 Primary Election but some will be tested after the mock election.

Mr. McManus asked whether footage of the mock election could be used for voter outreach. Ms. Charlson responded that the focus of the mock election is to conduct an election with the equipment and test processes and it may be difficult to capture footage as election officials are working through the process for the first time. Ms. Duncan suggested that recording public demonstrations may provide some footage.

Pilot Election in Rockville

SBE continues to work closely with ES&S, the Montgomery County Board of Elections, and the City of Rockville on planning for the upcoming pilot election in Rockville. Early voting will be conducted October 24th and 25th, and election day is November 3rd. This municipal election will represent the first use of the new voting system in a live election.

Training

Over the last few weeks, some local boards were trained on the high speed scanners, and training on the voting system's election management system (Electionware) started and will continue for the next few weeks in different locations throughout the State. A member of SBE's NVSR Project Team, with support and participation from ES&S and the regional managers, is conducting the training. Additionally, the trainers and everyone involved continue to work on planning, scheduling and logistics for all training requirements through the 2016 Primary Election.

Testing and Equipment Deliveries

The NVSR project team made significant progress with the User Acceptance Testing (UAT) of the voting system equipment. Successful acceptance testing has been performed on 100% of the ballot scanners and the ballot marking devices. In addition, over 60% of the ballot activation card printers have successfully completed UAT. Ms. Charlson recognized Anne Arundel, Howard, and Montgomery County Boards of Elections for assigning staff members to this effort. Their participation meant that testing was completed two weeks ahead of schedule.

As of September 18th, at least 16 of the local boards have their full allocation of ballot scanners, ballot marking devices, and printers. In addition, 18 local boards have the equipment they will need for mock election.

In addition to the precinct-based voting system equipment, the voting system also includes servers and workstations for the election management system. SBE and the NVSR project team delivered and installed at the local boards one of the three required networks, the certified network. (The other two networks are the election night results network and the regional reporting network.) An ES&S team sets up the networks, and NVSR testers verify and test the system in each local board. Preparation for the installation of the second network has begun.

Transportation

When transportation planning and logistics started last year, it was based on the voting system delivery requirements that were known at that time. Changes in the delivery requirements over the past few months have led to significant changes in the planning and logistics. SBE and the NVSR project team are working closely with the transportation vendor to modify the transportation requirements and the schedule and recalculate costs to stay within budget. In response to a question, Mr. Ross explained that the changes were necessitated by local boards' warehouses not being ready to accept the equipment and the delays in the State receiving the equipment.

Warehouse Assessments

SBE continues to work with several local boards to resolve issues found during the recent warehouse assessments. The Talbot County Board of Elections requires additional space, and in St. Mary's County, there was a meeting with the county's maintenance department about the necessary warehouse repairs and resolution of their rodent and reptile problem. Last week, SBE sent a letter to eight local boards addressing issues found with temperature and/or humidity and possible corrective actions.

Budget and Over the Target Requests

SBE continues to work with DBM and the Department of Information Technology (DoIT) on the budgets for the new voting system and election period for FY2017 and beyond and spending rates during and before FY2016.

On a related note, SBE submitted to DBM the first requirement for a new Major Information Technology Development Project. The new project is the technology refresh and enhancements to the Agency Election Management System. It is expected to have the new system in place in time for the 2018 gubernatorial election cycle.

Other

SBE completed updating the lease agreement with ES&S to reflect the contract modification approved by the Board of Public Works on August 5, 2015.

FY2015 Annual Inventory

SBE completed and submitted its FY2015 annual inventory report for equipment and supplies. The report was submitted to the Department of General Services on September 15th.

6. Voting Systems

Electronic Pollbooks

ES&S has submitted to SBE incremental software updates for the electronic pollbooks. The updates reflect the changes required for same day registration and address changes. An interim software version will be used for the mock election, with a final release expected in November.

On behalf of the local boards, SBE will procure additional pollbooks and the required ancillary items. These additional pollbooks are needed to implement same day registration during early voting and address the anticipated increase in voter registration. SBE is also replacing the EPIC (ExpressPoll Integrated Central) server in October, due to its age. This new server will also feature updated database software.

Documentation

The team has continued to update the *Conducting the Election Guide*, the principal manual for the process and procedures of the voting system for elections in the State. With the new system and the major software changes to the pollbooks, the team has been busy authoring new sections, and the regional managers have been reviewing draft chapters. The draft chapters will be used during the mock election.

Legacy Voting System

The legacy voting system will be used in a few municipal elections in November. These election includes Salisbury, Bel Air and Hurlock. In response to a question, Mr. Ross explained that municipalities can use any voting system and SBE was concerned about supporting multiple municipal elections with the new voting system during the mock election.

7. Information Technology

SBE's WAN Circuit Switchover

SBE's main Virtual Protected Routed Network data circuit was recently switched by Network Maryland/DoIT from Verizon to the One Maryland Broadband Network (OMBN) circuit. "The One Maryland Broadband Network" is a planned 1,294-mile fiber optic broadband network that will link 1,006 government facilities and community "anchor institutions" in every county in the State, while interconnecting and extending three independent networks. We were informed that the

switchover from Verizon to the OMBN circuit should save SBE some money. Ms. Mack asked for more information on the government facilities joining the network, and Mr. Cogan asked for more information on what anchor institutions are. Ms. Charlson will provide that information.

Symantec Endpoint Protection Manager

SBE IT has recently installed and configured a management server for the antivirus application. The antivirus application is called Symantec Endpoint Protection. The setup aids SBE IT to centrally manage the client endpoints or devices on the network, which aids with response or reaction time with any identified attack or threats. These distinct threats require layered protection and intelligent security at the endpoint. Symantec can proactively identify at-risk files and stop such threats without necessarily slowing down performance.

Early Voting Center – Selection Process

Ms. Charlson reported that the deadline for the local boards to submit information on their proposed early voting centers is Monday, September 28th. At the State Board's October meeting, SBE staff members will present information on new early voting centers proposed by the local board of elections. The Montgomery County Board of Election's recent selection of its proposed early voting centers has been reported in the media and triggered a significant number of constituent emails and phone calls and an online petition.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie provided the following report.

1. On September 25, the Civil Division of the Attorney General's Office will file the respondent's brief with the Supreme Court in *Shapiro v McManus*, No. 14-990, cert. granted 135 S. Ct. 2805 (June 8, 2015), a case concerning the way in which redistricting challenges are adjudicated in the federal courts. Specifically, the Supreme Court will decide when redistricting challenges may be dismissed by a single federal judge as "insubstantial" without convening a three-judge court. From Maryland's congressional and legislative redistricting after the 2010 Census, a total of six lawsuits have been filed in federal court, including two that are ongoing. *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011), aff'd, 133 S. Ct. 29 (2012); *Gorrell v. O'Malley*, Civil No. WDQ-11-2975, 2012 WL 226919 (D. Md. Jan. 19, 2012); *Olson v. O'Malley*, Civil No. WDQ-12-0240, 2012 WL 764421 (D. Md. Mar. 6, 2012); *Benisek v. Mack*, 11 F. Supp. 3d 516 (D. Md. 2014), aff'd, *Benisek v. Mack*, 584 Fed. App'x 140 (2014), cert. granted sub nom., *Shapiro v. Mack*, No. 14-990, 135 S. Ct. 2805 (June 8, 2015); *Parrott v. Lamone*, Civil No. 1:15-cv-01849-GLR (D. Md. June 24, 2015); *Bouchat v. Maryland*, Civil No. 1:15-cv-02417-ELH (D. Md. Aug. 31, 2015). Of these, only *Fletcher* was decided by a three-judge court.
2. Maryland has been asked to join the amicus brief in support of Texas in *Evenwel v. Abbott*, 2015 WL 459245, probable jurisdiction noted, No. 14-940 (S. Ct. May 26, 2015), 135 S. Ct. 2349 (Mem), another case arising from the redistricting process. In *Evenwel*, the Supreme Court will consider whether States may use total population figures in drawing legislative districts, or whether the Equal Protection Clause requires the use of an alternative measure based on the number of eligible voters. Maryland, like every other State, uses total population, as prescribed in Article III, § 4 of the Maryland Constitution ("Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population."). New York requested that Maryland join the amicus brief and is drafting the brief. Mr. Darsie reported that he expects that Maryland will join the amicus brief.

3. A three-judge panel will review the circuit court's decision granting the State Administrator's motion to dismiss in *Newton v. Lamone*, No. 02-C-14-191218 (Cir. Ct., Anne Arundel Co., Md.), a lawsuit challenging the residency of "Jay" Jalisi and his qualification to represent District 10 in the House of Delegates. Mr. Jalisi was elected in November 2014 and sworn in as a Delegate before any hearing was conducted or any action taken by the circuit court. In May, the Circuit Court for Anne Arundel County dismissed the lawsuit as moot. On September 10, 2015, the petitioners filed a memorandum challenging the circuit court's decision. The State Administrator's response is due September 25th.
4. The Maryland Court of Special Appeals in *Walsh v Mack*, No. 1664, September Term 2014 (Md. Ct. Spec. App. Sept. 16, 2015) affirmed the judgment of the circuit court dismissing the claims against all defendants. In that litigation, Cindy Walsh, an unsuccessful candidate for Governor in the 2014 Democratic Party primary, sought injunctive relief and monetary damages against election officials, certain candidates, and former Attorney General Gansler for their alleged failures to investigate "election irregularities," such as the exclusion of Ms. Walsh from media-sponsored debates, candidate forums and other campaign events.

APPROVAL OF PROPOSED REGULATIONS – CAMPAIGN FINANCE

Mr. DeMarinis presented two new regulations in a new chapter – COMAR 33.20.06. These new regulations were tabled from the August board meeting and now include guidance on contributions "made at the suggestion of." In response to a question from Mr. McManus, Mr. Darsie provided the statutory authority for this proposed regulation and Mr. DeMarinis agreed to add to the authority line a reference to Election Law Article, §14-105.

Ms. Howells made a motion to publish the proposed regulations with the additional citation in the authority line, and Ms. Mack seconded the motion. The motion passed unanimously.

APPROVAL OF PROPOSED REGULATIONS – VARIOUS TITLE 33 REVISIONS

Ms. Charlson explained that the proposed changes are based on a complete review of COMAR Title 33 because of the new voting system. This review was conducted by State and local election officials and identified changes not only needed because of this project but also other changes.

Definitions; General Provisions (33.01.01.01)

This change reflects the current practice of SBE personnel processing voter registration and absentee transactions for military and overseas voters. This is required because SBE received a grant from the U.S. Department of Defense's Federal Voting Assistance Program to create central processing of election-related transactions for military and overseas voters. The citation in the authority line is amended since the location in the U.S. Code of the Uniformed and Overseas Civilians Absentee Voting Act has been transferred from Title 42 to a new title, Title 52.

Meetings & Trainings - Election Judges (33.02.03.04)

Since the Baltimore City mayoral election cycle now coincides with the presidential election cycle, references to Baltimore City's prior election calendar can be removed. One proposed change removes the minimum time for an election judges' training session (3 hours) and instead requires that the training be long enough to cover the required material. If a local board can cover the required information in 2 ½ hours, this change would permit a slightly short training session.

Records Management – Statewide Schedules (33.03.01)

These changes allow local boards to store records off-site as long as the location meets minimum requirements, require that the local boards keep unvoted ballots until after the period for a recount or judicial challenge has passed, remove outdated documents, and add relevant documents.

Inspection of Public Records (33.04.01)

In 2014, the General Assembly passed legislation that moved the State's Public Information Act from the State Government Article to the new General Provisions Article. These changes update the references to the Public Information Act. No substantive changes are proposed.

Voter Registration – Processing Address Changes (33.05.04.05)

Several years ago, the General Assembly moved the party affiliation deadline from 12 weeks before the primary election to the voter registration deadline (21 days before an election). When this change became effective, §D of 33.05.04.05 should have been repealed as it was no longer necessary. The change repeals §D.

Election Day Activities (33.07)

1. *Late Ballot Changes* (33.07.01.01B) – If there is a late change in the ballot, the options in Regulation .01B are no longer available with either the current or new voting system. These options were more appropriate for lever machine voting systems. The change in Regulation .02B adds the specimen ballot as a means of providing notice of a late ballot change.
2. *Order & Decorum* (33.07.04.02B) – This change clarifies the use of cameras by representatives of the media to protect voters' screens and ballots from recording.
3. *Special Assistance* (33.07.05.02D) – Since the processing of "marking and casting the ballot" includes "operating the voting unit," the latter phrase is not necessary. The change deletes the "operating the voting unit" phrase.
4. *Exit Polling* (33.07.09.06) – This change renames an existing regulation.
5. *Non-Voting Hours Procedures* (33.07.10) – While this chapter is new, most of the text was adopted as central count procedures in 33.08.04.03 and .04. With a paper-based voting system, these voting procedures are now required on election day after the polls close. The new language (Regulation .01A) requires that the local boards use numbered seals for tracking purposes.

Canvassing (33.08)

1. *Local Board Counsel* (33.08.01.02-1) – This is a technical change.
2. *Stages of Vote Count* (33.08.01.05) – Since precinct tabulators will be used, the conditional language is no longer needed.
3. *Challenges* (33.08.01.08) – These changes require that a challenge to an absentee or provisional ballot application must occur when the document is presented for acceptance or rejection. If the local board decides to accept the ballot or provisional ballot application, the ballot is removed from the envelope or provisional ballot application and cannot be paired back up with the envelope or provisional ballot application. As a result, challenging an accepted ballot after it has been separated from the envelope or application has no effect. Similarly, challenging a ballot that was canvassed at a prior canvass cannot be accommodated. These changes were suggested by a local board counsel.
4. *Uniform Definition of a Vote* (33.08.02) – These changes reflect the new voting system, including using the ballot marking device to make selections.
5. *Central Count Procedures* (33.08.04) – The contents of Regulation .03 have been moved to 33.07.10 (Election Day Activities) as they more logically fit there with the new voting system. Since we are not proposing to recount voted ballots unless a recount is filed under Subtitle 12 of

the Election Law Article, Regulation .04 is no longer needed. The change to Regulation .07 incorporates the new voting system, and the change to Regulation .08 is technical.

6. *Post-Election Verification and Audit* (33.08.05) – These changes ensure that the precincts selected for audit are of a minimum size (i.e., 300 voters) to provide a meaningful audit, correct references to other regulations, and update terms and phrases because of the new voting system and same day registration.

Voting System – Certification and General Requirements (33.09.01)

These changes remove references to prior voting system standards and the federal agency that issued them and correct language that requires the local boards to perform acceptance testing. With a statewide voting system, SBE performs acceptance testing. The change in Regulation .03A(3) should have been changed when the regulations related to State certification were amended in 2013.

Absentee Ballots (33.11)

The change to 33.11.03.07 requires that voted ballots must be stored in a secure location until after the election has been certified and the time to challenge an election has passed. This change reflects the current practice of the local boards.

The proposed changes to 33.11.05 define what constitutes “unanimous” when a member of the local board of canvassers abstains from voting during an absentee canvass (33.11.05.01) and repeals as a rejection reason the death of an absentee voter before election day (33.11.05.03). This change is consistent with a legislative change from the 2015 Legislative Session.

Recounts (33.12)

1. 33.12.01.02 – This change is a technical change and reflects what is considered a “precinct” for a recount. For a recount, “precinct” includes the absentee 1, provisional, absentee 2 canvasses. This definition is unique to a recount and is needed in this subtitle.
2. 33.12.03.04 & 33.12.04.06 – These are technical changes that remove references to specific ways to secure a room and replaces them with more general terms that give the local boards flexibility in how they secure the room. The other change replaces a specific term for the type of memory storage unit used.
3. 33.12.05.02 – These changes are necessary to reflect all ballots are paper ballots and allow the State Administrator to approve other recount options. We are still learning the new system and how to conduct a recount and do not want to limit the options now.
4. 33.12.05.03 – This change requires the election director to prepare the tabulating unit (either precinct-based tabulating unit or the high speed scanner) for the recount. Depending on the recount option selected by the petitioner, a tabulating unit may be required.
5. 33.12.07.02 – These changes limit the grounds on which a challenge during a recount can be made. These grounds are more appropriate for a judicial challenge of an election (e.g., reliability of the voting units, how voting units aggregate votes) than for a recount, as these grounds will likely require technical voting system experts, rather than local election officials.
6. 33.12.07.04 – The proposed deletion removes a provision that should have been previously removed. Under the federal Help America Vote Act of 2002, each state was required to adopt rules defining what constitutes a vote and to the extent possible, remove subjective decisions about what the voter intended. In response, SBE adopted regulations on what constitutes a vote (see 33.08.02) and should have repealed this subsection.

33.15.03 Polling Places

The change to Regulation .01 corrects a grammatical error. The regulations are renumbered to use numbers that are currently reserved. The substance of the new regulation (.06) is already required by

§11-704 of the Criminal Procedures Article, but it seems reasonable to include the requirement in election regulations.

33.16 Provisional Voting

Election Law Article, §9-403(c) requires that SBE and the local boards of elections review the provisional voting guidelines before each election. In the May 29, 2015, edition of the *County Bulletin*, I requested comments on Subtitle 16 of COMAR Title 33. The Maryland Association of Election Officials' (MAEO) State Rules and Regulations Committee convened a meeting to review 33.16 and on June 30, 2015, submitted comments on current regulations in 33.16. Attached to this memo is a copy of the committee's comments on 33.16.

1. 33.16.01.01 – This change removes the definition of “regular ballot” since we previously proposed moving the definition to the general definition section of COMAR Title 33.
2. 33.16.02.05 – Subsection B of this regulation is not necessary as it repeats a requirement in subsection A. This change was suggested MAEO’s committee.
3. 33.16.03.01 – The change to §A(4)(c) clarifies that the specified change of address process only occurs on election day. During early voting, the voter can use the same day address change process. A clarifying change was suggested by MAEO’s committee.
4. 33.16.03.02 – This change recognizes that same day voter registration is an option during early voting. This change was suggested by MAEO’s committee.
5. 33.16.04.01 – This change limits access to provisional ballot applications before the canvass is complete to ensure an orderly canvass and certification.
6. 33.16.05.03 – For the 2014 elections, SBE approved a revised provisional ballot application that required only one signature. (Previously, provisional voters were required to sign two parts of the application.) The change in §C reflects the application change and was suggested by MAEO’s committee.
7. 33.16.05.04 – To reflect who completes the back of the provisional ballot application, MAEO’s committee recommends changing the reference from “local board” to “election director.” This change is made to §A.
8. 33.16.06.01 – The proposed change defines what constitutes “unanimous” when a member of the local board of canvassers abstains from voting during the provisional canvass. This standard mirrors the standard proposed for absentee canvasses (see 33.11.05.01).

33.17.07.04 Early Voting – Non-Voting Hours

The change in §A expands where the local board can returns equipment used during early voting. The current regulation says “office,” but “facility” is broader and allows for the return of equipment to the warehouse. The changes reflect changes enacted during the 2015 Legislative Session to §11-301 of the Election Law Article. This law provides for public observation of the local boards of canvassers printing and aggregating early voting results on election day.

Mr. McManus requested whether the changes to 33.16.03.01C and 33.16.04.02C(2) by the Maryland Association of Election Officials (MAEO) were included in the proposed regulations. Ms. Charlson responded that they are not. Legislation authorizing same day registration and address change limited the process to early voting centers, not local boards of elections’ offices. As a result, MAEO’s suggestion for 33.16.03.01C was not included. Similarly, MAEO’s suggested language for 33.16.04.02C(2) was not included because of statutory restrictions.

Ms. Mack made a motion to publish the proposed regulations summarized above, and Mr. Cogan seconded the motion. The motion passed unanimously.

APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS

Mr. DeMarinis presented requests from eight campaign finance committees for waivers of late fees. The committees requesting a waiver of late fees are:

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| 1. Bissett, Phil Committee To Elect
2. Credit Union PAC, MD
3. Klase, Anne, Friends of
4. Neverdon, Russell for Baltimore | 5. Slate For Fiscal Responsibility
6. Beard, Jeff Concerned Citizens for
7. Murray, Gareth E. Friends Of
8. Vaeth, Brian for Governor of MD. 2014 |
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Ms. Mack made a motion to adopt the State Administrator's recommendations for the eight committees requesting waivers of late fees, and Ms. Howells seconded the motion. The motion passed unanimously.

APPROVAL OF TITLE 14 WAIVER REQUESTS

Mr. DeMarinis presented requests from ten businesses for waiver of late fees to the Title 14 filing requirements. The businesses requesting a waiver of late fees are:

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| 1. Royston, Mueller, McLean & Reid, LLP
2. Niles, Barton and Wilmer, LLP
3. Maryland Family Network
4. National Cryptologic Museum Foundation
5. Maryland Horse Breeder Association, Inc.
6. Best Buddies International, Inc. | 7. Public Works Contractors Association of Md., Inc
8. Benevis, LLC for Kool Smiles
9. Oaktree European Principal Fund III, L.P.
10. Wegmans Food Markets, Inc. |
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Ms. Mack made a motion to approve the requests from ten entities to waive the assessed late fees, and Mr. Cogan seconded the motion. The motion passed unanimously.

Two businesses – Exelon Corporation and Hutchin Hill Capital LP – requested a waiver from disclosing certain contract information. In response to a question about verifying information about public State contracts, Mr. DeMarinis explained that businesses have previously argued against disclosure since the contracts are already public and it is "unduly burdensome" to generate contract information internally.

Ms. Howells made a motion to waive the requirement to disclose certain contractual information for these two businesses, and Ms. Mack seconded the motion. The motion passed unanimously.

REQUEST FOR CONFIDENTIALITY

Mr. DeMarinis presented a request that one sitting judge's residential address and phone number be designated confidential.

Ms. Mack made a motion to designate this individual's residential address and phone number as confidential, and Ms. Howells seconded the motion. The motion passed unanimously.

ANNUAL REVIEW OF SBE BY-LAWS

Mr. McManus tabled the review of the newly added duties to the *Duties of the State Board and State Administrator* until the next meeting.

APPROVAL OF LBE BY-LAWS

Ms. Charlson presented by-laws from six local boards. She recommended that the State Board approve the by-laws for Baltimore, Dorchester, Queen Anne's, and Wicomico Counties and request changes to the by-laws submitted by Calvert and Prince George's Counties. Ms. Charlson made her recommendation to request changes because two local boards removed provisions that are statutorily required. Ms. Charlson is awaiting revised by-laws from Montgomery County Board of Elections.

Mr. Howells made a motion to approve the by-laws for Baltimore, Dorchester, Queen Anne's and Wicomico Counties, and Ms. Mack seconded the motion. The motion passed unanimously.

Ms. Howells made a motion to accept Ms. Charlson's recommendations to request changes and resubmission for Calvert and Prince George's Counties, and Mr. Cogan seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Rebecca Wilson of SAVE our Votes asked about the scope of the mock election and whether tasks that were deemed out of scope would be tested. Mr. McManus explained to Ms. Wilson that she had requested time to present to the State Board and that she could submit questions by email to SBE staff. Rebecca Wilson used the recent Volkswagen admission about its diesel engines to justify the need for post-election manual audits of paper ballots. Ms. Wilson summarized the handout she provided to the board members.

Mary Ann Keeffe, Secretary of the Montgomery County Board of Elections, stated that she was addressing the State Board as an individual member of the Montgomery County Board of Elections. Ms. Keeffe expressed her concern with the Montgomery County Board of Elections' recent selection of two new early voting centers and that the selection process was not governed by statistics or increasing voter participation. In response to a question, Ms. Keeffe explained the public process used by the Montgomery County Board of Elections to identify possible early voting centers. Ms. Keeffe does not recall who proposed the two new locations and recommended that the nine early voting centers used in the 2014 elections continue for the 2016 elections. This will enable more data to be collected, including a high turnout election, for these locations. Ms. Keeffe provided a written statement of her comments.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Ms. Howells disclosed that she contributed \$125 to the Friends of Big Ed Reilly Committee. This contribution was for tickets to an event.

SCHEDULING OF NEXT MEETING

The next meeting was tentatively scheduled for October 15, 2015, at 2:00 pm.

ADJOURNMENT

Ms. Howells made a motion to adjourn the meeting, and Mr. Cogan seconded the motion. Mr. McManus adjourned the meeting at 3:51 pm.

CLOSED MEETING

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(7) and (8), which permit closing a meeting to consult with counsel to obtain legal advice on a legal matter and consult with staff, consultants, or other individuals about pending or potential litigation. The board will discuss the October 2015 hearing before the Fourth Circuit Court of Appeals on *National Federation of the Blind v. Lamone* and consult with litigation counsel Assistant Attorney General Julia Bernhardt regarding the status of the appeal without waiving privilege. Where there is a statutory requirement that prevents disclosure about a particular matter, the Open Meetings Act (General Provisions Article, §3-305(b)(7) and (8)) authorizes a public body to convene in closed session to comply with that requirement. Ms. Howells made a motion to convene in closed session, and Mr. Cogan seconded the motion. The motion passed unanimously.

In addition to the board members present at the open meeting, Mr. Darsie, Ms. Bernhardt, and Ms. Charlson were present. During the closed session, Ms. Darsie provided background on the litigation, and Ms. Bernhardt summarized the legal arguments. The status of the online ballot marking tool was discussed. No action was taken. The closed meeting adjourned at 5:08 pm.