

State of Maryland 

State Board of Elections – August 24, 2017 Meeting

Attendees: David McManus, Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Jeff Darsie, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Keith Ross, Assistant Deputy, Project Management
Paul Aumayr, Director, Voting System
Jared DeMarinis, Director, Candidacy and Campaign Finance
Erin Perrone, Director, Election Reform and Management
Mary Cramer Wagner, Director, Voter Registration
Stacey Johnson, MDVOTERS Project Manager
John Speir, Regional Manager
Janey Hegarty, IT Division

Also Present: Katherine Berry, Election Director, Carroll County Board of Elections
Paula Troxell, Deputy Director, Carroll County Board of Elections
Kevin Keene, Election Director, Harford County Board of Elections
Dale Livingston, Deputy Director, Harford County Board of Elections
Allison McCord, Harford County Board of Elections
Anthony Gutierrez, Election Director, Wicomico County Board of Elections
Ralph Watkins, League of Women Voters
William Jackson, Disability Rights Maryland
Damon Effingham, Common Cause MD
Holly Joseph
Matt Dalton
Ralph Tyler

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:09 pm and stated that there was not a quorum of four members present. He stated that the meeting was being recorded and an audio file will be posted on SBE's website.

RATIFICATION OF MINUTES FROM JULY 2017, MEETING

Mr. Cogan made a motion to ratify the minutes from the July 27, 2017, meeting, and Ms. Howells seconded the motion. The motion passed unanimously.

ADDITIONS TO THE AGENDA

Ms. Charlson stated that the Chair had requested a closed session and a member of the public had requested to address the board members.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

National Association of State Election Directors' Meeting

Linda Lamone is attending the National Association of State Election Directors' summer meeting in Anaheim, California. While there, she will also attend the board meeting for the Electronic Registration Information Center (ERIC).

Election Directors' Meeting

On August 24th, we hosted an Election Directors' meeting. Some local boards attended the meeting in person, while others attended by conference call. A summary of this meeting will be shared when it is complete.

2. Election Reform and Management

Spanish Translation Committee

The first meeting of the Spanish Translation Committee is scheduled for August 29th at 1:30 pm. Initial members include Erin Perrone and Natasha Walker from SBE, Joice Hourihan and Gilberto Zelaya from the Montgomery County Board of Elections, and Frances Nunez and Jaime Vazquez from the Prince George's County Board of Elections. This meeting will be an opportunity to discuss the objectives and goals, other possible members, an effective time frame, and the work to be accomplished.

Election Judge Workgroup

Chapters 1 through 4 of the *Election Judge Manual* have been revised and submitted to the Attorney General's Office for approval. Revisions have begun on chapters 5 through 8. The next meeting is scheduled for September 7th and revisions to chapters 9 and 11 through 13 will begin. Also, the workgroup discussed how to ensure a voter's privacy at the scanning unit. This is a "work in progress" in order to discuss different circumstances.

Usability Testing – Election Judge Manual and Forms

The University of Baltimore has agreed to test and offer recommendations to improve the *Election Judge Manual* and forms used by election judges during early voting and election day. Erin Perrone will be working with Kathryn Summers to make election judge documentation understandable to reduce the likelihood of election judges experiencing problems or confusion.

3. Voter Registration

Electronic Registration Information Center (ERIC)

On July 24th, the most recent ERIC report was distributed to the local boards for processing. The deadline to process this report was August 14th. The counts for these reports are:

- Cross State Report (another member state has newer information than MD): 6,109
- Potential Duplicates: 64
- In-State Updates (more recent information at MVA): 4,489
- Deceased (according to the Social Security Administration): 3
- NCOA (USPS' National Change of Address program): 82,880

MDVOTERS

The yearly Joint Application Design (JAD) sessions were held at SBE on August 8-10. This is a committee of SBE and LBE members that meet with the software development team to plan for enhancements that will be implemented in 2018. The 2018 plan includes three software releases scheduled for April, July and December. These releases will include enhancements in Candidacy, Absentee, Reports and Labels, electronic voter registration applications, and other areas of MDVOTERS.

Ms. Howells asked whether SBE receives reports from the federal jury commissioners of individuals who request excusal from federal jury service because they are not U.S. citizens. Mr. Darsie summarized his 2016 advice that it would likely require legislation to create a

new voter removal program based on information provided by the federal jury commissioners and stated that he does not believe that there is anything in federal law that prohibits the federal jury commissioners from providing this information. Ms. Howells opined that, since the State does not have authority to direct the federal government to provide this information, this might be why the Election Law Article is silent on information from federal jury commissioners. She proposed receiving this information but not automatically removing the voter based on the information.

Ms. Wagner explained that the State jury commissioners provide information on individuals who report they are non-U.S. citizens, moved, or have died and asked which types of this information the State Board members want to collect from the federal jury commissioners. Ms. Howells stated that only information about non-U.S. citizens was needed since there are other sources of information for deaths and address changes. Ms. Howells requested that Ms. Wagner send to the two federal jury commissioners covering Maryland a letter requesting this information.

Ms. Howells stated that there is a rumor that Maryland officials want non-citizens to vote, and to respond to this rumor, she would like to receive monthly the following information:

- How many non-citizens do we remove from the voter registration list?
- How many non-citizens that we remove for this reason voted?
- How many non-citizens that we remove for this reason voted more than once?
- How many names of non-citizens have we submitted to the Office of the State Prosecutor?

Ms. Wagner explained that, as this information cannot be obtained from MDVOTERS, historical data cannot be provided. Moving forward, this data will be collected manually and provided in each month's Administrator's Report. The data will be cyclical, in that there will be more data to report in the month following a report from the State's jury commissioners and data in other months will reflect self-reporting of voters. Ms. Wagner reported that she has forwarded to the State Prosecutor eleven names of voters with voting history and seven names of voters without voting history.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

As of August 21, 2017, 170 candidates have filed a certificate of candidacy at SBE for the 2018 General Election.

Campaign Finance

On August 10th, a committee named Grassroots Supporters of Hans Riemer qualified for public matching funds under the new Montgomery County public finance program. The committee submitted 366 individual qualifying contributions with a monetary aggregate of \$25,437.00 on August 1, 2017. The committee is eligible to receive \$86,136.00 in public matching funds.

On August 15th, a committee named Friends of Reggie Oldak filed an initial request of public matching funds. The committee submitted 144 qualifying contributions with a monetary aggregate of \$15,235 and is eligible to receive \$48,185.00 in public matching. A committee for George Leventhal for Montgomery County submitted an additional request for public matching funds. The committee submitted 32 qualifying contributions with a monetary aggregate of \$2,912.00 and is eligible to receive \$12,930.00 in public matching. The request

from Friends of Reggie Oldak has been reviewed and approved, and the request from George Leventhal for Montgomery County is being reviewed.

Committees may file matching fund requests on the first and third Tuesday of every month.

In response to a question from Mr. McManus about what happens if the fund is empty, Mr. DeMarinis explained that the Montgomery County government would either replenish the fund or change the formula for disbursements.

Enforcement

On August 21, Progressive Prince George's Slate agreed to pay a \$500 civil penalty for collecting, receiving, or disbursing money while there is a vacancy of a responsible officer. On July 18, 2017, Committee to Elect Catherine Pugh remitted \$18,000 to the Fair Campaign Financing Fund for the anonymous contributions received during the 2016 mayoral election. This action was in response to Gary Brown's verdict. The committee must amend the campaign finance report to reflect the anonymous contributions. In response to a question, Mr. DeMarinis explained that the sources continue to be anonymous and the Fund receives funds for anonymous contributions.

Title 14 – Requests to Waive Late Fees

Four business entities doing public business, Norair Engineering Corp., Plano-Coudon, LLC, En-Net Services, LLC, and Pinnacle Communications Resources Co., sought a waiver of late filing fees. Since these requests were denied, no Board action is required. The requests and agency determination were provided in the meeting folder.

5. Project Management Office (PMO)

Inventory: Excess Equipment Disposal

During this reporting period, SBE continued the TS-R6 voting system disposal planning work with the DGS and the State's contract recycler. The recycler's first of several weekly pickups will take place on September 5th. There are approximately 17,000 - 18,000 black cases remaining at the warehouse. If we are unable to sell them, they will be recycled or trashed.

FY 2017 Annual Inventory

The FY 2017 annual inventory reconciliation continues for the equipment and supply inventory. There are approximately 50 reconciliation tasks to be completed. We continue to scan the legacy equipment at SBE's Central Warehouse in preparation for its disposal.

New Inventory System

SBE continues to work with the inventory system vendor to resolve issues identified during the inventory audit visits and preparing for the full implementation of the system.

Mr. McManus stated that he received requests from two universities for legacy voting equipment and asked whether these requests can be accommodated. Ms. Charlson explained that legacy voting equipment is only provided to election officials currently using this voting system due to software licensing issues. Dominion Voting Systems owns the software licenses for the legacy voting equipment and will not grant a license for this purpose.

6. Voting Systems

Electronic Pollbooks

Development of updated software for the pollbooks has continued with enhancements as requested by SBE. Limited testing with some local boards will start next week and will expand if initial testing is successful. The plan is for a final software release in November.

All pollbooks are scheduled to have CMOS batteries replaced prior to the 2018 Primary Election. These are small coin-like batteries that are responsible for maintaining the time and various settings when the units are powered down. The first shipment of batteries has been received by the local boards, and a second shipment is expected in September.

ES&S is working on the expected final prototype of the pollbook to be used for a pilot in 2018. This pollbook will have updated hardware, but the software will be identical.

Pre-Election Testing

ES&S and SBE have been working on pre-primary election training for the local boards. The training will include best practices from other jurisdictions as well as lessons learned from the 2016 elections. Training will include all aspects of the election and is scheduled for January 2018.

Prior to this training, a separate volume test and training will take place for those local boards that use the DS850 high speed scanners. This will involve one day for each local board, including ballot preparation, ballot scanning, ballot image export and review. This activity will take place in late November and early December.

Upcoming Server Updates

We anticipate two updates to the voting system servers in each local board. The first update is an update to the network driver, to enable increased upload speed of data from the voting units. This second change is hard drive re-allocation to enable more space availability. The first change has been approved by the EAC, and the second is undergoing the approval process.

7. Information Technology

SBE has procured and installed a new telephone network. The system is running parallel to the existing telephone system to ensure operation continuity and allowing staff to familiarize themselves with the new system.

ASSISTANT ATTORNEY GENERAL'S REPORT

No report was provided.

APPROVAL OF 2018 ABSENTEE BALLOT APPLICATION

Ms. Perrone explained that the revisions requested at the July 2017 State Board meeting had been added to the proposed absentee ballot application for the 2018 elections and that the local boards of elections were reviewing the draft applications and verifying contact information.

Ms. Howells explained that her proposed changes are an attempt to explain to voters a new, complex concept in a small space using 4th grade language. She proposed the following changes:

1. In the “deadline” section of the instructions (page 1), add “or fax” to “If you want us to mail you a ballot” in the “Primary Election” and the “General Election” sections.
2. For the text in the margin of Block 7 of the application (page 2):

Paragraph	Proposed Language	Ms. Howell’s Proposed Language
1	If you choose email, you will be sent a link to print your ballot about three weeks before the election. If you don’t see it, check your spam filter.	If you choose Internet delivery, we will send you an email with a link to your ballot about three weeks before the election. You must print this ballot and return it to your local elections board. If you don’t see an email from the board of elections, check your spam filter.
2	You must print your ballot and return it to your elections office. Your printed ballot will be hand copies onto an official ballot so it can be counted.	NOTE: A fax or Internet ballot you have printed yourself cannot be read by our scanners, so board of elections workers will use the information on your ballot to mark an official ballot for you. This official ballot will be machine counted with other ballots.
3	The State Board of Elections has taken steps to protect the secrecy of the email process, but cannot protect against all risks of using the Internet.	Delete – no replacement language proposed.

3. For the “Email” box in Block 7 of the application (page2), change the proposed language to “Internet Delivery” and “We will email you an Internet link.”

Ms. Howells stated that it was important for voters to know that election officials duplicate ballots as it creates the opportunity for mistakes and mischief. There was a discussion about whether the text in the third paragraph should be included in the application or after the voter logs into the online ballot delivery system and needs to decide how he would like to mark the ballot. Mr. McManus asked Ms. Perrone to present at the September meeting a revised application that includes Ms. Howell’s changes but instead of removing the third paragraph, include Ms. Howell’s proposed text for the online ballot delivery system (“The State Board of Elections has taken steps to protect the secrecy of your ballot but cannot guaranty secrecy when you mark your ballot online using your own computer.”) as the text in the third paragraph and increase the font size of the text in the margin of Block 7.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

This agenda item was tabled until the next meeting.

APPROVAL OF REQUEST FOR ADMINISTRATIVE CLOSURE

This agenda item was tabled until the next meeting.

USE OF EXPRESSVOTE BALLOT MARKING DEVICE – 2018 ELECTIONS

Ms. Charlson explained the plan to obtain information and feedback on how the ExpressVote ballot marking device should be used in the 2018 elections. Over the next three meetings, the members will receive feedback from local election officials and other individuals, candidates, or organizations who are interested in this issue. Ms. Charlson stated that local boards of elections would present feedback at this meeting, and other individuals will have the opportunity to

provide feedback at the September and October meetings, with the State Board members adopting at policy at the October meeting. This schedule ensures that election officials have time to update documentation and train election judges on the policy for the 2018 elections.

Ms. Charlson reported that eight local boards of elections provided written comments on the use of the ExpressVote ballot marking device and these comments were provided in the meeting folder. Mr. Keene, Election Director for the Harford County Board of Elections, asked to present his comments at the meeting. Ms. Charlson noted that Ms. Berry and Mr. Gutierrez were present and could also offer comments.

Mr. Keene stated that the ability to deploy the ExpressVote ballot marking devices is a good thing but there is a limited need for the accessible unit. He stated that it is difficult to educate voters on the device, the navigation causes confusion, and it takes longer to vote using the device than marking a paper ballot by hand. Mr. Keene stated that the decision should be focused on voters, not candidates, and recommended a policy that required deploying one ExpressVote ballot marking device to each location but give the local boards of elections the discretion to deploy more if needed. He stated that this recommendation is consistent with other deployments, where SBE sets the minimum standard and gives the local boards of elections discretion to deploy more if needed. In response to a question, Mr. Keene stated that there were no issues with meeting the requirement that a minimum number of voters use the device. Mr. Cogan stated that election officials need to consider candidates, not just voters, and there would be no issue with the devices if the navigation and the display of candidate names was resolved.

Ms. Berry, Election Director for the Carroll County Board of Elections, stated that election judges will need to select the ballot style manually on the ExpressVote ballot marking devices and shared her concern that, if the device is used differently in different counties, candidates running for districts that cross jurisdictional lines (e.g., congressional districts) may have greater concerns.

Mr. Gutierrez, Election Director for the Wicomico County Board of Elections, stated that voters using the ExpressVote ballot marking device took a long time to vote the ballot questions in the 2016 General Election and the mandatory language about the device during the check-in process generated a line at the device. He stated that confused voters may also impact the candidates.

Mr. Cogan stated that the mandatory language during the check-in process may need to be revisited as part of this discussion due to the need to balance accessibility information with the speed of the check-in process. There was a discussion about adding to the mandatory language information about other accessibility options (e.g., magnifiers) and the impact of additional language on slowing down the check in process. Ms. Howells asked to see the signs used in the 2016 elections that related to the ExpressVote ballot marking device. In response to questions from Mr. Cogan, Ms. Charlson stated that candidates and political parties had not yet been notified about the process to receive feedback, and Ms. Duncan stated that the proposed number of candidates for Governor will mean that there will be at least two screens for this contest. Ms. Howells asked if she could be provided an [other](#) opportunity to navigate through a ballot on the ballot marking device.

In response to the request from the August meeting, Mr. Aumayr estimated that the cost to upgrade the voting system software and firmware is \$500,000. This includes \$400,000 for ES&S to perform the software and firmware upgrade and \$100,000 for election officials to verify and test the upgraded software and firmware. In terms of timing, Mr. Aumayr stated that modifying the contract would need to begin now for the software and firmware to be updated by the end of

January 2018. This process includes preparing the materials for and obtaining approval from the Board of Public Works (typically a two-month process) and starting the upgrade process in November 2017. In response to a question from Mr. McManus, Mr. Aumayr stated that the cost to install software and firmware that improved the navigation would be the same, but this software update does not exist. Mr. McManus asked for the calendar to be provided in writing at the September board meeting.

OLD BUSINESS

Voter Registration: Condemned and Razed Property

Ms. Howells asked whether SBE receives notice of condemned or razed buildings as required by Election Law Article, §3-504(b)(2), to which Ms. Wagner responded that notice is to be provided to the local boards of elections, not SBE. Ms. Wagner stated that she would ask the local boards of elections if they receive this information. Ms. Howells stated that she understood that some voters (for example, military voters) may need to maintain for voter registration purposes an address of a condemned property and while this information is required by State law, she does not think that there will be many voters registered at these addresses.

Proposed Motion: Security Awareness

In response to Mr. Hogan's concerns from the July meeting, Mr. Cogan added a sentence to his proposed motion. The revision motion is:

Recognizing that security of the voting system is of paramount concern to the public, and that the Board must – in faithful discharge of their duties – be fully aware of security issues, the Board directs that the Administrator brief the Board on security issues in January, April, July, September (only in an election year), and October of each year, and additionally as significant security issues arise, or as requested by an Board member. Security includes but is not limited to cyber, personnel, equipment and physical matters, and also includes security issues relating to voter systems or election processes of other states. *Given that security issues are, by their nature, sensitive and confidential matters, these briefings will be provided only in closed meetings, unless the Administrator determines that a given matter is suitable for discussion in the open meeting.* (New language in italics.)

Discussion and action on the revised motion was tabled until the next meeting.

NEW BUSINESS

Rebecca Wilson, SAVE Our Votes

Ms. Wilson provided a letter expressing SAVE Our Votes' concerns with the proposed absentee ballot request form, the online delivery of absentee ballots, and the recent Request for Proposals for an automated ballot duplication system. At the meeting, she summarized the concerns:

1. *Absentee Ballot Request Form:* The removal from the request form of a driver's license number and the last four digits of the Social Security number will make it "extremely easy for a criminal to fraudulently request absentee ballots." SAVE Our Votes recommends that a voter who wants to receive an absentee ballot electronically be required to request the ballot electronically and limiting the use of the paper request form to voters who want to receive their absentee ballots by mail.
2. *Online Delivery of Absentee Ballots:* Because of the "significantly lower rate of return" and the transcription required for absentee ballot delivered electronically, SAVE Our Votes recommends limiting electronic delivery of absentee ballots to military and overseas voters and voters with disabilities.

3. *Absentee Ballot Duplication*: SAVE Our Votes recommends that a system used to duplicate ballots automatically be tested, inspected, and certified the same way as a voting system is and be certified to federal voting system standards.

CLOSED MEETING

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(7), which permits closing a meeting to consult with counsel to obtain legal advice on a legal matter. This exemption allows the Board to maintain the attorney-client privilege regarding a potential enforcement action.

Ms. Howells made a motion to convene in closed session, and Mr. Cogan seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(7) of Section 3-305 of the Open Meetings Act to obtain legal advice on a potential enforcement action. The closed session began at 3:52 pm.

In addition to the board members present at the open meeting, Mr. Darsie, Ms. Charlson, Ms. Duncan, and Mr. DeMarinis were present at the closed session. During the closed session, Mr. Darsie provided legal advice on a potential enforcement action.

No action was taken. The closed meeting adjourned at 4:28 pm.

The public meeting reconvened at 4:30 pm.

Open Meetings Act Training

Ms. Howells reported that she completed the online Open Meetings Act training course and provided Ms. Charlson with a copy of the certificate.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Ms. Howells reported that she contributed \$100 to the Republican Central Committee of Prince George's County and \$100 to Phil Parenti for Maryland.

CONFIRM NEXT MEETING

The next meeting is scheduled for Thursday, September 28, 2017, at 2 pm.

ADJOURNMENT

Mr. McManus adjourned the meeting at 4:33 pm.