

State of Maryland   
State Board of Elections Meeting – April 23, 2009

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Attendees: Robert L. Walker, Chairman  
Andrew Jezic, Member  
David McManus, Member  
Charles E. Thomann, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Sandy Brantley, Assistant Attorney General  
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 Director  
Rick Urps, Election Reform Division  
Roger Stitt, Voter Registration Division  
Janey Hegarty, IT Division  
Matt Libber, Project Management Office  
Kathy McClellan, Project Management Office

Also Present: Betty Nordaas, Howard County Board of Elections  
Holly Joseph, Save Our Votes  
Stan Boyd, Save Our Votes  
Tom Feehan, Premier Election Solutions

#### **DECLARATION OF QUORUM PRESENT**

Chairman Robert Walker called the meeting to order at 2:33 p.m.

#### **APPROVAL OF THE MARCH 26<sup>TH</sup> BOARD MEETING MINUTES**

The minutes of the March 26, 2009, board meeting were presented for approval. Mr. Thomann made a motion to approve the minutes, and Mr. Jezic seconded the motion. The minutes were approved unanimously.

#### **ADDITIONS TO THE AGENDA**

Chairman Walker stated that there were no additions to the agenda.

#### **ADMINISTRATOR'S REPORT**

Ms. Lamone provided the Administrator's Report.

##### *1. Announcements*

Sue Holloway, who serves as the agency's fiscal officer responsible for accounts receivable and payable, is retiring on April 29<sup>th</sup> after nine years of State service – two of which have been with the State Board of Elections. Sue's hard work and dedication will be missed. Sue's departure has opened the door for two current staff members to advance. Christine Oswald, who has been serving as an office secretary with the Campaign Finance Division, has been learning Sue's duties and is ready to take over when Sue leaves. In turn, Ebony Parran, who is the receptionist in a contractual capacity, will advance to the permanent position being vacated by Christine. This agency has a great tradition of promoting within, and Ms. Lamone stated that she is confident that both Christine and Ebony will excel at their new positions.

##### *2. Meetings and Important Dates*

###### Election Directors' Conference Call

An election directors' conference call was held on Tuesday, April 14<sup>th</sup>. During the meeting, staff briefed the election directors on the final status of several election bills, including the voting system and early voting legislation. There was a discussion about responding to a public information request and upcoming special elections. A summary of the election directors' meeting was provided to the board members.

###### Democrats Abroad Symposium

On Friday, April 24<sup>th</sup>, Nikki Trella will be a panelist at the Democrats Abroad's Symposium on Overseas Voting. Also on the panel will be Scott Wiedmann, Deputy Director of the U.S. Department of Defense's Federal Voting

Assistance Program, and Elizabeth Gracon, Chief Voting Action Officer with the U.S. Department of State. Ms. Trella was asked to highlight any consistent problems with forms received from military and overseas voters that prevent them from being processed and provide information about Maryland's efforts relating to these voters. Ms. Lamone noted that there is a national discussion on how best to serve these voters. Mr. Thomann inquired about the expected attendees at this symposium, to which Ms. Trella responded that the attendees will represent Democrats Abroad from around the world.

### 3. *Election Management and Reform* Federal Financial Reports

Each year, states receiving federal funds under the Help America Vote Act (HAVA) are required to submit financial reports showing how federal funds granted under HAVA and other funds (State and local) used to meet the requirements of HAVA have been spent. On March 31<sup>st</sup>, three financial reports – one for each of the three categories of funds – were submitted to the U.S. Election Assistance Commission (EAC). During the preparation of these reports, errors were identified in previously filed reports, and amended reports for prior fiscal years will be submitted within in the next month.

#### EAC's Voter Registration and Election Day Survey

Staff was provided the opportunity to verify the 2008 Voter Registration and Election Day Survey data before the EAC's contractor submitted the data to the EAC. This verification occurred earlier this month, and the spreadsheet containing the data has been posted at [www.elections.state.md.us/elections/2008/turnout/index.html](http://www.elections.state.md.us/elections/2008/turnout/index.html) (Additional General Election Related Reports).

#### Maryland State Plan Revision

EAC policy requires a state to revise its State Plan if: (1) state legislation is enacted that alters how the state is meeting the requirements of HAVA; and (2) additional federal funds are available and the state's initial State Plan did not contemplate the full funding of HAVA. As a result, Ms. Trella is in the process of updating Maryland's State Plan to reflect the voting system legislation enacted by the Maryland General Assembly and the full funding of HAVA. Once updated, the proposed revisions will be considered by the HAVA State Planning Committee, presented to this board, and submitted for publication in the *Maryland Register*. At the end of the public comment period, any comments will be reviewed and if necessary, updates to the State Plan will be made, and the State Plan will be submitted to the EAC for publication in the *Federal Register*. Ms. Lamone stated that a copy of the revised plan will be provided to the board members when it is available.

#### Regulatory Review Process

As part of the agency's regulatory review process, staff members have reviewed and are drafting proposed changes to the third (of five) set of COMAR subtitles. The subtitles include 33.13 (Campaign Financing), 33.14 (Administration of Public Financing Act), 33.15 (Precincts, Polling Places, and Facilities), and 33.16 (Provisional Voting). Ms. Lamone noted that the proposed regulations to these subtitles will be presented for approval at the next board meeting.

#### Election Judges' Manual Committee

Rick Urps has established a committee to review and update the election judges' manual, training materials, and other issues relating to election judges for the 2010 election. The first committee meeting was held on Wednesday, April 22<sup>nd</sup>, and at this meeting, the members discussed their roles and responsibilities, established a timeline for its efforts, and identified updates to existing documents and additional documents due to the new requirements for early voting and the voting system. Ms. Lamone noted that the committee's effort is complicated by the fact that the procurement of the new voting system will not be completed until later this year.

#### Survey of Voters with Disabilities

One of the agency's Managing for Results' objectives is to survey voters with disabilities to evaluate their satisfaction with the State's voting system. In February 2009, Mr. Urps mailed 426 surveys to voters who voted using the audio ballot in the 2008 General Election. (The electronic pollbooks capture the names of voters for whom an election judge encodes a voter access card for an audio ballot.) The deadline to respond to the survey has passed, and his final summary of the survey results were included in the meeting folder. The majority of respondents had a positive response to the State's voting system and the assistance provided by election judges. Specifically, they appreciate the opportunity to vote independently and raised concerns about the change in the voting system. Ms. Lamone reported that a compilation of the respondent's comments can be provided on request.

### 4. *Voter Registration* Field Support

Rex Brown has joined the Voter Registration Division as a Field Support Representative. Mr. Brown is an EDS consultant who comes to us from Colorado, where he recently completed a two-year assignment with the Secretary

of State. In Colorado, he provided training and on-site support to local boards of elections on SCORE, the state's voter registration system. Colorado and Maryland use the same basic registration system developed by Saber, and SBE looks forward to Mr. Brown using his experience in assisting our local boards with their work in the statewide voter registration system (MDVOTERS).

#### User Testing

User testing of the next release of MDVOTERS begins on April 27<sup>th</sup>. SBE has asked expert users from our local boards of elections to participate in testing the new software.

#### System Updates

Members from local boards of elections will come to SBE on May 11<sup>th</sup> and 12<sup>th</sup> to review and prioritize the trouble tickets and requests for changes to the MDVOTERS system. In these interactive sessions, Stacey Johnson will lead the group in setting the priorities for developing future improvements to MDVOTERS. Much of this year's development will focus on accommodating the new early voting process.

### 5. *Candidacy and Campaign Finance (CCF)*

#### Report

On April 10, 2009, the Montgomery County Special Election Pre-Primary 2 campaign finance report was due for participating political committees.

#### Online Filing

On April 9, 2009, CCF launched new method of filing the Affidavit of Limited Contributions and Expenditures. Political committees may file an E-Affidavit via SBE's website. The E-Affidavit was successfully filed by one candidate for the Montgomery County Special Election.

#### Training

Starting April 21, 2009, Jared DeMarinis and Ruth Maynard began traveling to the local boards of elections to begin training on ELECTTrack and candidate entry. Candidate filing for the gubernatorial election opens on July 6, 2009.

#### Enforcement Actions

On April 2, 2009, SBE received a payment of \$10,887 from the State's Central Collections Unit via the Office of the State Prosecutor. Ms. Lamone noted that it has been difficult to obtain collections due, in part, to the Unit's antiquated system.

On March 31, 2009, the Office of State Prosecutor charged 41 committees for failure to file from the July 2, 2008, referral for the 2007 Pre-General and Post-General campaign finance reports. Mr. DeMarinis has been working with numerous committees to bring them back into compliance to avoid prosecution efforts.

### 6. *Voting Systems*

#### Special Election

Montgomery County had their County Council District 4 special primary election on Tuesday. The contest between the top two Democrats is close and will be decided by absentee and provisional ballots. Ms. Lamone also reported that there was a recount in a councilmanic district in the City of Salisbury where there was a one vote difference. At the conclusion of the recount, there was still a one vote difference. The voting units are also being used in a number of municipal elections taking place next month, including the Montgomery County District 4 special general, Easton, Havre de Grace and Hagerstown, as well as the election of the student member of the Montgomery County Board of Education.

#### Voting System Procurement

The General Assembly passed HB 893 which provides that if a determination is made that there is no voting system commercially available that meets all of the requirements of §9-102 of the Election Law Article, SBE shall procure an optical scan voting system, but continue to deploy the current touchscreen voting units to ensure that voters with disabilities can vote independently. (The touchscreens would be used in lieu of procuring ballot marking devices required by §9-102.) Staff's initial analysis is that there is no system commercially available to meet the State's standard. The basis for this conclusion is that there is no optical scan voting system with a ballot marking device that has been shown by an independent testing laboratory to meet the EAC's 2005 Voluntary Voting System Guidelines. Mr. Thomann asked about the difference between the optical scan voting systems previously used in Maryland and the systems now available, to which Ms. Lamone reported that the equipment at issue is the ballot marking device, not the optical scan voting units. Ms. Lamone stated that staff has been working with the Department of Budget and Management and the Attorney General's Office to determine how to proceed with the procurement. The goal is to present the contact to the Board of Public Works by the end of 2009.

## Project Planning

The voting systems team has submitted project planning documents for the new voting system to Department of Information Technology. These included the project charter, the system boundary document, the communication management plan, Risk management plan and a high level schedule. These are 'living documents' and given the changes to the voting system requirements discussed above, these plans themselves will obviously need some substantial changes.

### 7. *Early Voting*

In addition to the voting system bill, the other significant piece of election legislation was the passage of HB 1179 establishing early voting requirements. The highlights of that bill are:

- a. Early voting applies only during regularly scheduled elections
- b. Permits a voter to vote in an early voting center in his or her county of residence
- c. Each county must have the following number of sites:
  - i. More than 300,000 registered voters – 5 centers (Anne Arundel, Baltimore City, Baltimore County, Prince George's County, and Montgomery County)
  - ii. Between 150,000 and 300,000 registered voters – 3 centers (Howard County)
  - iii. Less than 150,000 registered voters – 1 center (All other counties, although Harford and Frederick are close to the 3 center requirement)
- d. Days
  - i. 2010 – 2<sup>nd</sup> Friday before the election through the Thursd day before the election, excluding Sunday
  - ii. 2012 – 2<sup>nd</sup> Saturday through the Thursday before the election, including Sunday
- e. Hours – 10 a.m. through 8 p.m., except for Sunday when the hours will be 12 p.m. through 6 p.m.
- f. Early voting sites must be selected 6 months in advance and meet the general polling place requirements.
- g. Public outreach must begin 30 days prior to each early voting period and inform the public about early voting and the locations of the centers. Public outreach must include public service media announcements, mailings to all registered voters in each county, and other measures as appropriate.
- h. Provisions that apply to election day also apply to early voting
- i. SBE to adopt regulations and guidelines.

Ms. Lamone reported that site selection is likely to be an issue, and election officials need to consider security, parking and accessibility when selecting locations.

In preparation for early voting, bi-weekly project team meetings are being conducted to establish the scope of the project, required deliverables, and assignment and tracking of tasks, development of a master schedule and identifying priorities. The project team consists of members of each division within SBE and a representative from Maryland Association of Election Officials.

### 8. *Information Technology*

Ms. Lamone reported that the Information Technology Division has been very busy and referred the board members to the list of activities in the Administrator's Report.

### 9. *Legislation*

Despite the fact that numerous election-related bills were introduced, very few bills were passed. Of the five departmental bills that were introduced, only one passed. That bill was *HB 1395 – Reports and Affidavits – Failure to File*, which allows the Affidavit of Limited Contributions and Expenditures to be filed late, subject to penalties. Prior to this change, if the affidavit was not filed on time, the only recourse for the committee officers was to file a full campaign finance report. Departmental bills that did not pass included a bill to make changes to election judge hiring requirements (HB 1394), bills to make technical and clarifying changes to general elections administration issues (HB 1392) and campaign finance issues (HB 1398), and a bill to establish a deadline for when a challenge to a candidate's eligibility can be filed.

Other significant election-related legislation that did not pass includes:

- Election Audits (SB 595 and HB 665) – This bill, as filed, required SBE to provide additional information to the public and allow the public to testify at all meetings. The bill also established a requirement to hand count voted ballots in certain precincts. The precincts are chosen based on a formula that is contingent on the margin of victory in certain races.
- Public Campaign Financing Act for Candidates for the General Assembly (SB 663 and HB 1353) – This bill established a public funding system for candidates for the General Assembly. Candidates would have to meet certain qualification requirements to receive the money. Once qualified, they would receive a statutory prescribed amount of money depending on the race and the amount of competition faced. The bill as amended

would have also raised the campaign finance contribution limits. Mr. Jezic inquired as the amount that the contribution limits would have increased, to which Mr. Goldstein responded the individual contribution limit would have increased to \$500.

- Access to Voting Room by Minors (HB 3) – This bill changed, from 12 to 17, the age requirement for a minor to be allowed access to the voting room and voting booth with his or her parent.
- Change of Party Affiliation Deadline (HB 589) – This bill made the deadline to change party affiliation before a primary election the same as the deadline to register to vote.
- Gubernatorial Primary Election Date (HB 1352) – This bill moved the date of the Gubernatorial Primary Election to June.

Ms. Lamone reported that, during an election year, SBE typically takes the position that no legislation should be enacted that affects the election process. In response to a question from Mr. Jezic, it was stated that the deadline for a voter to change his or her party affiliation is 13 weeks before a primary election. Mr. Walker inquired about whether the office's desktop computers were being rebuilt in-house, to which Michael Kortum responded that they were rebuilt with in-house resources to keep existing systems operational. Mr. Jezic asked about the agency's position on the HB 3, HB 589, and HB 1352, to which Ms. Lamone responded that the agency supported changing the deadline for party affiliation changes (HB 589), took no position on HB 3, and explained the challenges in performing all of the tasks that must be performed between the gubernatorial primary and general elections (HB 1352).

#### **ASSISTANT ATTORNEY GENERAL'S REPORT**

Sandy Brantley presented her report on the advice and legal actions taken in the last month. She reported that there are several lawsuits concerning a petition for referendum of a Howard County zoning amendment. One of the lawsuits filed against SBE was dismissed, and she reported that she expects to file a motion to dismiss (arguing that the case is moot) on another case. Ms. Brantley reported that there is a federal lawsuit pending challenging the constitutionality of the petition signature requirements in State law. She noted that SBE will remain in the case to defend the State law. In response to a question from Mr. McManus, Ms. Brantley stated that the federal lawsuit is challenging the standard for counting signatures, and SBE will be arguing in support of the Court of Appeals' opinion specifying the standard for count signatures.

Ms. Brantley also reported that an organization submitted a request for advance determination on a petition seeking referendum on SB 277 of the 2009 Legislative Session. She stated that her letter advised the organization that the submitted text fairly and accurately described some of the substantive provisions of SB 277 but did not mention other substantive provisions of the legislation. The deadline to submit a request for advance determination is May 1, 2009.

#### **WAIVER OF CAMPAIGN FINANCE LATE FEES**

Mr. DeMarinis recommended that late fees incurred by the following committees be waived:

1. Friends of Kevin Patrick Kane
2. Garrett County Law Enforcement Officers PAC
3. Families for Devin Tucker
4. Citizens for Mark Cascia
5. Friends of Joe DiMarco
6. Friends of Vince Gardina
7. Team 30 Slate
8. Montgomery Women – A Leadership and Political Action Committee
9. Committee to Re-Elect Pamela Howard
10. Friends of Todd M. Turner
11. Voters for Silver Spring/Takoma Park PAC
12. Friends of Earl Adams
13. Committee to Unlock Frederick Gridlock PAC
14. Anne Arundel County Realtors PAC
15. Friends for Sheila Dixon
16. AGENTPAC Prof. Insurance Agents Association MD PAC
17. Friends of N. Scott Phillips
18. Friends of Marie Allwine
19. Committee to Elect Scott Rolle

Mr. DeMarinis recommended that the request for reconsideration by Citizens for (Karen) Kuker-Kihl be denied.

Mr. Thomann made a motion to accept the recommendations granting a waiver of late fee and denying the request for reconsideration, and Mr. McManus seconded the motion. The motion passed unanimously.

**ADMINISTRATIVE CLOSURE OF CAMPAIGN FINANCE ENTITY**

Mr. DeMarinis recommended that the Salute to John Douglass Committee and Friends of Bob Tousey be administratively closed. Mr. DeMarinis explained that the balance in Salute to John Douglass Committee's bank account was used to pay bank fees and that the outstanding debt is owed to third parties, not SBE. Ms. Lamone explained that administrative closure only extinguishes the account, not the debt. Mr. DeMarinis explained that the bank balance reported by Friends of Bob Tousey does not match the bank's balance, but this issue was reviewed by the State Prosecutor, who is agreeable to an administrative closure of this entity. Mr. Walker asked about the frequency of administrative closures, to which Mr. DeMarinis responded that they are infrequent.

Mr. McManus made a motion to close the Salute to John Douglass Committee and Friends of Bob Tousey, and Mr. Jezic seconded the motion. The motion passed unanimously.

**STATE BOARD BY-LAWS**

Mr. Walker stated that this agenda item will be deferred until all five board members are present.

**OLD BUSINESS**

There was no old business.

**NEW BUSINESS**

Mr. Thomann stated that the Anne Arundel County Board of Elections recently stated that election judges are now considered county employees. Ms. Lamone responded that election judges are public officials, not county employees. Ms. Brantley stated that she would follow-up on this issue.

**SCHEDULE FOR THE NEXT MEETING**

Mr. Walker announced that the next meeting will be held on May 28<sup>th</sup> at 2:30 p.m.

**CLOSED SESSION**

On March 29, 2009, at 10:20 a.m., the members of the State Board of Elections met in closed session to discuss an investigative proceeding on actual or possible criminal conduct. All four members of the Board present at the March 29<sup>th</sup> public meeting voted to have a closed session under the authority provided in section 10-508(a)(12) of the State Government Article of the *Annotated Code of Maryland*. In addition to the board members, Ms. Lamone, Mr. Goldstein, and Ms. Trella were present during the closed session. During the closed session, Ms. Trella presented information about the voters that appear to have voted more than once in the 2008 General Election. No actions were taken.

**ADJOURNMENT**

Mr. Jezic made a motion to adjourn the meeting, and Mr. McManus seconded the motion. The motion passed unanimously, and Mr. Walker adjourned the meeting at 3:22 p.m.