

# State of Maryland

## State Board of Elections Meeting – September 24, 2009

Attendees:

Robert L. Walker, Chairman  
Bobbie S. Mack, Vice Chairman  
David McManus, Member  
Rachel T. McGuckian, Member  
Charles E. Thomann, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Jeff Darsie, Assistant Attorney General  
Mary Wagner, Voter Registration Director  
Donna Duncan, Election Management Director  
Paul Aumayr, Voting System Director  
Nikki Trella, Election Reform Director  
Jared DeMarinis, Candidacy and Campaign Finance Director  
John Clark, Voter Registration System Project Manager  
Stacey Johnson, Voter Registration System Deputy Project Manager  
Keith Ross, Project Management Office  
Matt Libber, Project Management Office  
Kathy McClellan, Project Management Office

Also Present:

Alisha Alexander, Election Director, Prince George's County  
Abigail Goldman, Baltimore City  
Anthony Gutierrez, Election Director, Wicomico County  
Stuart Harvey, Election Director, Frederick County  
Jerrold Garson, Board Chairman, Montgomery County  
Holly Joseph, Save Our Votes  
Stan Boyd, Save Our Votes  
Barbara Sanders, League of Women Voters Maryland  
Daneen Banks, Prince George's County

### **DECLARATION OF QUORUM PRESENT**

Chairman Walker called the meeting to order at 2:35 p.m.

### **APPROVAL OF THE July 30<sup>th</sup> BOARD MEETING MINUTES**

The minutes of the July 30, 2009, board meeting were presented for approval. Ms. Mack made a motion to approve the minutes, and Mr. McManus seconded the motion. The motion to approve the minutes was approved unanimously.

### **ADDITIONS TO THE AGENDA**

Chairman Walker asked if there were additions to the agenda. Mr. DeMarinis stated that there was a request for a declaratory ruling for the Board's consideration. Mr. Walker stated that since all Board members were present, the bylaws would be considered under Old Business.

### **ADMINISTRATOR'S REPORT**

#### **1. Announcements**

##### FY2010 Reductions in Personnel-Related Expenditures

Ms. Lamone reported that at the end of August, Governor O'Malley announced the temporary salary reductions and furloughs for State employees. The temporary salary reductions will be applied as follows: State employees making \$40,000 or more will have their salaries reduced in an amount equal to 5 days. State employees making \$39,999 or less will have their salaries reduced in an amount equal to 3 days. In compensation for the salary reduction, there will be five Service Reduction Days – all of which correspond to a State Holiday weekend. The mandatory furloughs will be applied as follows: Employees making \$40,000 to \$49,999 will be required to take 3 furlough days; employees making \$50,000 to \$99,999 will be required to take 4 furlough days; and those making \$100,000 and above will be required to take 5 furlough days. By way of example, Ms. Lamone explained that an employee whose annual salary is \$41,000 would see a \$1,731 overall reduction in his or her annual salary.

## 2. Meetings and Important Dates

### Election Directors' Conference Call

Ms. Lamone reported that staff hosted an election directors' conference call on Tuesday, September 15<sup>th</sup>. The meeting covered the following topics:

- The status of the voting system procurement;
- Clarification on specific costs related to the voting system procurement;
- Discussion on the number of voting units (both touchscreen and optical scan) to be deployed to the polling places;
- Replacement of batteries, headsets, and keypads for touchscreen units and the fact that these items will be paid for with federal disability grant funds;
- Update from election directors on their progress in securing early voting centers; and
- Notification that a new MVA mailing would be sent out within the next month.

Ms. Mack asked about the progress the local boards are making in selecting their sites. Ms. Lamone responded that two local boards had submitted proposed sites for review and approval by the State Board and the other counties were well on their way towards finalizing their plans. Mr. McManus asked what the return rate is on MVA mailings. Ms. Wagner responded that the return rate is approximately 15-18.5 percent.

### Legacy in Leadership

Ms. Lamone reported that she and the staff have held a series of meeting with Wesley Queen who is the director of the University of Maryland's Legacy Leadership Institute. The Institute seeks to engage civic minded retirees by providing them educational programs as well as placement in different government related internship opportunities. After learning about the program from Mr. Queen, we sent him a list of possible internships at SBE. Mr. Queen had ten legacy leader interns who were interested in working here on different projects that we proposed. A meeting was held on September 8<sup>th</sup> with the potential interns. All but two of the interns were interested in interning here, and staff members are reviewing their backgrounds and qualifications to determine which intern would be a good match for working on different projects at SBE.

## 3. Voter Registration

### MDVOTERS Update

Ms. Lamone reported that Mary Jo Waite of the Field Support Program has organized the Voter Registration Division's user acceptance testing for the latest release of MDVOTERS software. User testing began on September 21<sup>st</sup> and will be followed by a full mock election test. The software is scheduled to be put into production on September 24<sup>th</sup>. The new release improves the formatting of our correspondence to registrants regarding such topics as the death of a family member, incomplete applications, and potential removal from the registration list due to a felony conviction.

### MDVOTERS Field Support

Ms. Lamone reported that Rex Brown of the Field Support Program and Janet Smith, Manager for Data Quality, have been making assist visits to our local boards. In September, they provided assistance with MDVOTERS business processes at Prince George's and Harford Counties.

### Data Center Upgrade

Ms. Lamone reported that the Voter Registration Division has been working with Saber's network administrator and SBE's procurement officer Donna Wiltshire on ordering the equipment needed to update the Annapolis and Cumberland data centers. These data centers have been operating since 2005, and updating their equipment before the 2010 elections is a high priority. According to plan, all equipment is to be received by September 29<sup>th</sup>. Saber then will test and assemble the new equipment and complete the installation by the end of December. The installation will require at least two business days during which the MDVOTERS system will not be able to be used by all users across the State.

### MVA Interface

Ms. Lamone reported that SBE had initiated a contract modification with Saber to create changes to allow a better and more robust interface with MVA. The interface would have automated the identification and notification of voters whose MVA data and voter registration information are not the same. This project was put on hold due to budgetary concerns and the determination that the funds would be better applied to data center upgrades. The processes will continue manually. The money saved from this project will be used to support the data center upgrade.

## 4. Candidacy and Campaign Finance

### Candidate Filings

Ms. Lamone reported that as of September 21, 2009, 41 candidates have officially filed for the 2010 Gubernatorial Election, including Comptroller Peter Franchot who filed for office on Friday, September 18<sup>th</sup>.

#### Republican State Central Committee

Jared DeMarinis reported that on September 18<sup>th</sup>, SBE, Michael Steele for Maryland, and the Republican State Central Committee signed a memorandum of understanding outlining the repayment of an impermissible administrative contribution by Steele for Maryland to the Republican State Central Committee. The impermissible administrative contributions totaling \$77,500 was discovered by staff during the course of routine audits of political committees. The administrative contributions consisted of a \$75,000 payment to Baker Hostetler, LLP for legal fees for the Maryland redistricting in 2002 and a \$2,500 direct administrative contribution. Commencing October 8, 2009, and for every month thereafter, repayment of the \$75,000 by the Republican State Central Committee to Michael Steele for Maryland will be as follows:

- a. The first \$15,000 of any and all revenue received by Republican State Central Committee will be exempt from any payment and will be used for administrative purposes only.
- b. 15% of any and all contributions, transfers, loans and other income received by the Republican State Central Committee will be paid to Steele for Maryland, excluding certain direct cost expenditures.
- c. At no time during the MOU will a payment due to Steele for Maryland be lower than \$2,000 per month.

Additionally, the \$2,500 administrative contribution by Steele to Republican State Central Committee will be reclassified as a transfer within the allowable limits of such transfers for the current election cycle. And finally, the entire debt to Steele for Maryland shall be paid off completely no later than December 31, 2012.

Ms. Mack asked whether this had the effect of creating a loophole in the law. Mr. DeMarinis responded that this was an extraordinary situation, but felt confident that it was being dealt with in a manner that was fair and still strictly ensuring compliance through required verification by SBE of the committee's transactions.

#### Audit

Ms. Lamone reported that on Friday, September 18, 2009, the amended reports for the 2008 Annual campaign finance report were due. On August 14, 2009, 351 committees received deficiency notices. During our review, the most common deficiencies were missing or incomplete addresses, incorrect entries for reimbursements, and a lack of explanation for expenditures. Currently, nearly 70% of the committees have filed a timely amendment. The remaining committees are being charged late fees.

#### Classes

Ms. Lamone reported that throughout this and next year, the Candidacy and Campaign Finance staff will conduct seminars on the reporting requirements and responsibilities for Chairman and Treasurers. These seminars teach the basics of campaign finance compliance, electronic filing as well as a general overview of election law. The next scheduled class will be Friday, October 23<sup>rd</sup> from 6-8pm. Mr. Thomann noted that he has attended the class and that it was well done and very informative.

### **5. Voting Systems**

#### Municipal Elections

Ms. Lamone reported that the voting units were successfully used in two key municipal elections on September 15<sup>th</sup>: the City of Annapolis' Primary Election and the City of Frederick's Primary Election, with approximately 23% and 18% turnout, respectively. Both cities will be using the system for their November general elections, which will be held on November 3<sup>rd</sup>.

A total of 63 electronic pollbooks were also used in the Annapolis and Frederick primaries. More than 8,400 voters were checked in with a total of only 2 hardware errors.

Ms. Lamone informed the Board that there was some controversy surrounding the Annapolis Primary Election. After the election, there were allegations that the candidate who received the Democratic nomination did not meet the City's residency requirements. Ultimately, the issue was resolved by the candidate voluntarily declining the nomination, which will allow the Democratic Party to appoint a nominee.

#### New System

Ms. Lamone reported that the voting system team has continued to move forward with the planning for the new voting system. This includes necessary proactive maintenance on approximately 25% of the DRE voting units that will remain at the LBEs and be used for the 2010 Gubernatorial Election. This will include replacement batteries for some 70% of those units. In addition, SBE has used disability grant money to

procure needed supplies for the DREs including the batteries, extra keypads, and headsets for the visually impaired.

#### **6. Early Voting**

Ms. Lamone reported that MAEO has established a *2010 Elections Task Force*. In addition to developing local board procedures and recommendations for managing the new voting system implementation and early voting, the task force is intended to be the liaison to this office in the development of policies and guidelines for early voting and issues surrounding the new voting system. The first meeting between the Task Force and SBE covered issues including the allocation of equipment and the selection of early voting sites. The next meeting is scheduled for September 24<sup>th</sup>. Ms. Lamone introduced the Task Force members who were in attendance at the Board meeting.

#### **7. Information Technology**

Ms. Lamone referred the Board to the provided list of activities of the IT Division, noting how busy they continue to be supporting all of the ongoing activities and projects.

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

Jeffrey Darsie reported that he has been reviewing a variety of issues regarding the acquisition of Premier Election Solutions by Election Solutions and Software. Mr. Darsie noted that this acquisition has a significant impact on a variety of issues. Mr. Darsie also noted that Sandra Brantley, Assistant Attorney General, was also involved with the Republican State Central Committee issue.

Mr. Darsie also reported that, in response to a request by the Harford County Board of Elections, the Office of Opinions and Advice is this week issuing an Opinion concerning the method of counting registered voters for purposes of EL §10-301.1(b), the statute mandating the number of early voting centers to be established in each county. If "inactive voters" were included in the count of registered voters, the number of early voting centers in Harford County could change from one to three. In essence, the Opinion of the Attorney General confirms an earlier letter of advice from AAG Brantley to Ms. Lamone on July 20, 2009, which concluded that the required count represents an "administrative purpose" under EL §3-503(d) and thus may not include inactive voters in the total.

Mr. Darsie next reported that attorneys from the Office of the Attorney General met with representatives of the American Civil Liberties Union ("ACLU") on August 12, 2009, to discuss issues relating to the 100-foot "no electioneering" zone required by EL §16-206(b). The ACLU represents a Washington County homeowner whose property was located across the street from a polling station and partly inside the 100-foot restricted zone. On election day, political signs were removed from his lawn, first by the election judge and later upon the order of a Sheriff's Deputy. A separate but related issue concerned the right of groups such as the ACLU to distribute non-partisan voter's rights brochures to voters within the no-electioneering zone.

Neither issue has been finally resolved. With respect to the homeowner's objection, however, it was agreed that the Office of the Attorney General would undertake with SBE a review of SBE's guidance to local election officials in light of the constitutional questions presented. In responding to questions from Mr. McManus and Ms. McGuckian, Mr. Darsie noted that the advice given by the AG's office has been that the "no-electioneering" zone extends to private property. However, guidance from courts around the country have been divided. Nonetheless, the recommendation moving forward is to involve showing sensitivity to how the "no-electioneering" zone is applied to private property. In other words, there may be other factors that should be considered when determining whether or not to apply the "no-electioneering" zone to private property. Mr. Darsie also noted that the early voting regulations provide that a "no-electioneering" zone and an electioneering zone must be considered when selecting the early voting site. Ms. McGuckian also questioned whether a more proactive solution might be necessary – such as legislation amending current law.

### **REGULATIONS**

Ms. Trella presented for final adoption proposed changes to Subtitles 13 (Campaign Financing), 15 (Precincts, Polling Places, and Directories), and 16 (Provisional Voting), 33.07.03 (Electin Day Activities – Officials' Duties Generally) and 33.08.01 (Canvassing – Definitions; General Provisions). In response to a question from Mr. Thomann about which political committees were exempt from the electronic filing requirements, Mr. Goldstein responded that the proposed changes to the regulations address which committees are exempt from this requirement.

Mr. McManus made a motion for final adoption, and Mr. Thomann seconded the motion. The motion was approved unanimously.

## **REQUEST FOR POLLING PLACE AND DISTRICT CHANGES**

Ms. Duncan requested approval of the St. Mary's County request to change a portion of the boundary line between Legislative Districts 29A and 29C. The change is a corrective action from the 2002 redistricting recently discovered through the census mapping efforts with the Maryland Department of Planning.

Mr. Thomann made a motion to change the boundary line, and Ms. Mack seconded the motion. The motion was approved unanimously.

## **APPROVAL OF EARLY VOTING CENTERS**

Ross Goldstein reported that the Carroll County and Allegany County local boards of election had submitted their early voting site selection forms for the State Board's approval. Mr. Goldstein stated that staff had reviewed the forms and supporting materials from each county and found them to be complete and in compliance with the requirements established by the State Board in the recently approved early voting regulations (33.17.02). Specifically, the Board reviewed photos, maps, site layouts and population data for each of the sites.

In response to a question from Ms. Mack, Mr. Goldstein confirmed that the Carroll County site was not accessible by public transportation, but, according to Carroll County election officials, there is no public transportation in the county. With respect to Allegany County, the site is accessible by public transportation. Ms. McGuckian made a motion to approve the Carroll County and Allegany County early voting centers, and Ms. Mack seconded the motion. The motion was approved unanimously.

## **BIENNIAL CONFERENCE**

Mr. Goldstein stated that this is the year during which a biennial conference would normally be held. However, staff determined that trying to hold a biennial conference this year, without having detailed information about the new voting system or early voting would not be beneficial for participants. Accordingly, the decision was made to recommend postponing the meeting until next year. To save money for SBE and the local boards, the plan is to combine the biennial conference with the annual MAEO conference, which is scheduled for May 15<sup>th</sup> through 19<sup>th</sup> of next year. Ms. Lamone noted that since the biennial meeting is a mandatory (see §2-104 of the Election Law Article), counties will be required to provide the funds necessary to ensure that staff can attend the meeting. This year, many counties refused to fund attendance at the MAEO annual conference. This was detrimental to the election officials in those counties who missed out on important information and educational opportunities.

Ms. Mack made a motion to approve the proposal to postpone the biennial meeting until May 2010, and Mr. Thomann seconded the motion. The motion was approved unanimously.

## **OLD BUSINESS**

Mr. Walker stated that the bylaws had been on hold pending a meeting with the full Board. The members of the State Board agreed on the following changes to the version of the bylaws presented at the meeting:

1. Section 1.3E – adopted Mr. Thomann's language providing for an annual review of the bylaws as opposed to only reviewing the bylaws when a two or more new member are appointed.
2. Section 2.2A2 – changed the chairman from the “sole” spokesperson to the “primary” spokesperson.
3. Section 2.2B – inserted “Beginning after the term of the current vice-chairman, the vice chairman shall not be a member of the same party as the chairman.”
4. Section 3.2B – inserted the requirement that all Board members receive notice of all requests for public participation.
5. Section 3.3E2 – changed the sentence to be gender neutral.
6. Section 4.2 – adopted an approach that allows members to engage in campaign and political activities, but require disclosure to the Board for certain activities.
  - Removed the two alternative versions.
  - B5 – removed the requirement to disclose the fact that campaign material is being displayed.
  - B6a – removed the requirement to disclose the fact that campaign paraphernalia is being worn.
  - B7 – amended to allow a member to attend party central committee meetings provided this fact is disclosed to the Board.
  - B7 – removed the reference to consulting with party members.
  - C – inserted the following provision to address the issue of the timeframe for making required disclosures:
    - Members shall provide any required disclosure of an activity specified under subsection B to the Administrator or the Administrator's designee within a reasonable period of time following the activity that required the disclosure. The Administrator shall provide copies of each disclosure received from members at the Board meeting immediately following the receipt of the disclosure.

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7. Section 4.3 – Inserted the financial disclosure due date of April 30<sup>th</sup> of each year.

Mr. McManus made a motion to approve the bylaws with the amendments agreed upon at the meeting and pending final review and approval by the members. Ms. McGuckian seconded the motion. The motion was unanimously approved.

Mr. Walker asked Mr. Goldstein to provide an update at the next meeting on the status of the local boards' adoption of bylaws.

**NEW BUSINESS**

Mr. DeMarinis informed the members of the State Board that a petition for a declaratory ruling was received from Michael Dawson, Chairman of the Constitution Party of Maryland. Mr. Dawson submitted a petition to question whether the Maryland Independent Party constitutes a legally permissible name under §13-208(d)(1) of the Election Law Article. That section prohibits a political committee from using a name that is "intended or operates to deceive people as to the political committee's true nature or character." Mr. Darsie stated that there was no role for the State Board to take because the law only applies to political committee names, not political party names. Mr. McManus asked whether the petitioner had any other recourse and suggested that SBE contact the petitioner and inform him that additional time would be needed to review the issue.

**SCHEDULE FOR THE NEXT MEETING**

The next meeting is scheduled for October 22, 2009, at 2:30 p.m.

**CLOSED SESSION**

Mr. Walker asked for a motion to end the open meeting and go into a closed session for the purpose of discussing a matter relating to the voting system procurement and preparation of the SBE budget. Ms. Mack made the motion which was seconded by Mr. McManus. The motion to hold a closed session was unanimously approved.

Closed Meeting Summary – September 24, 2009

*On September 24, 2009, at 3:45 p.m., the members of the State Board of Elections met in closed session to be briefed by staff and counsel on certain legal and procedural issues regarding the procurement of a new voting system and services, and SBE's budget submission to the Department of Budget and Management. All five members of the Board present at the September 24<sup>th</sup> public meeting voted to have a closed session under the authority provided in sections 10-503(c) and 10-508(a)(14) of the State Government Article of the Annotated Code of Maryland. In addition to the board members, Ms. Lamone, Mr. Goldstein, Ms. O'Connor, and Assistant Attorney General Jeffrey Darsie were present.*

*No actions were taken.*

**ADJOURNMENT**

Mr. Walker adjourned the meeting at 3:45 p.m.