

**STATE BOARD OF ELECTIONS**

**P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840**

Robert L. Walker, Chairman  
Bobbie S. Mack, Vice Chairman  
Rachel T. McGuckian  
David J. McManus, Jr.  
Charles E. Thomann



Linda H. Lamone  
Administrator  
  
Ross Goldstein  
Deputy Administrator

Agenda  
State Board Meeting

**March 29, 2012**

**2:00 PM**

State Board Office  
151 West Street, Suite 200  
Annapolis, Maryland 21401

1. Declaration of Quorum Present
2. Approval of Prior Meeting Minutes
3. Additions to the Agenda
4. Administrator's Report
5. Assistant Attorney General's Report
6. Approval of Regulations
7. Waivers of Campaign Finance Late Fees
8. Request for Declaratory Ruling
9. Old Business
10. New Business
11. Confirm Next Meeting Date
12. Adjournment

**Public Participation**

The members of the public may address the Board on any item on this agenda. Pursuant to §3.2B of the Board's bylaws, public participation at a meeting must be pre-scheduled and pre-approved by the Chairman. To obtain approval to speak at a board meeting, please contact Ross Goldstein at 410-269-2877 or by email [rgoldstein@elections.state.md.us](mailto:rgoldstein@elections.state.md.us) no later than 5:00 pm the day before the meeting.

**1. Announcements**

SBE is pleased to welcome Kalaya Byrd, a new employee who is assigned to the Candidacy and Campaign Finance Division. She will be working part-time assisting the Division with its projects and filings. Currently, Kalaya is a college student at Bowie State working on her degree in Criminal Justice.

**2. Meetings and Important Dates**

Election Directors' Meeting

On March 13<sup>th</sup>, SBE hosted an election directors' meeting. Twenty-three local boards of elections participated in the conference call. At this meeting, there were discussions about tasks associated with the voter registration deadline, pre-election activities for the voting units and electronic pollbooks, legislation about the online absentee ballot delivery system, and upcoming inventory procedures. A summary of the meeting will be provided in the board meeting folder. The next election directors' conference call is scheduled for Tuesday, April 17<sup>th</sup>.

Local Board Attorney Pre-Election Conference Calls

Before each election, SBE hosts a series of conference calls for the local boards' attorneys. To date, SBE hosted a conference call on February 29<sup>th</sup> and March 14<sup>th</sup>, and the final call is scheduled for March 28<sup>th</sup>. During the conference calls, there were discussions about regulations, available SBE resources, the missing candidates from two congressional districts, revised petition procedures, and various election-related reminders. The conference calls have been well attended, with ten local boards represented on the first call and 17 local boards on the second call.

**3. Election Reform & Management**

Absentee Ballots

On March 6<sup>th</sup>, the local boards of elections began sending absentee ballots to domestic, civilian voters. The pilot project to automate the absentee ballot mailing process continues to run well. Montgomery, Anne Arundel and Kent Counties continue to use the services provided by Runbeck for the primary election and now have access to Runbeck's customer portal that allows them to track the absentee ballots both at Runbeck during production and once the ballots enter the U.S. Postal Service system.

Congressional Districts 5 & 8 – Male Delegates to the Democratic National Convention

SBE learned that two candidates for Male Delegates to the Democratic National Convention were omitted from the ballot. One candidate was from the 5<sup>th</sup> Congressional District, and one candidate was from the 8<sup>th</sup> Congressional District. One of the candidates sued SBE, and SBE agreed to:

- Correct the affected ballots. This included re-creating the ballots for the voting units, paper ballots for absentee and provisional voting, electronic ballots for the online absentee ballot delivery system, audio ballots, and screen shots for specimen ballots.
- For Democratic voters in the affected districts who had already been sent an absentee ballot, SBE's mail house sent these voters the corrected ballot and an explanation as to why they were receiving a second ballot.
- The affected local boards cleared and re-prepared the voting units for early voting and election day.
- The affected local boards also updated their specimen ballots. For those local boards that had already mailed their specimen ballots, SBE designed a postcard for Democratic voters in the two congressional districts. The local boards will mail the postcards.
- SBE's ballot printers printed and shipped to the local boards the corrected ballots. These ballots will be used for provisional voters and absentee voters who requested an absentee ballot after the omission was found.

SBE distributed to the local boards procedures for storing, processing and canvassing ballots from Democratic voters in the 5<sup>th</sup> and 8<sup>th</sup> Congressional Districts.

Online Absentee Ballot Delivery System – 2012 General Election Enhancements

SBE previously issued a request for resumes for a security consultant to assist with the design and development of the online ballot delivery system and the drafting of a Request for Proposal for a security audit and penetration testing. Stacey Johnson and Cheré Evans identified five qualified candidates and with Whitney

Faust, conducted interviews. Stacey and Cheré are working on a Request for Proposals for an accessibility review of the website.

#### Election Judges' Training – Observations

During February and March, Rick Urps traveled around the state to observe election judges training. Rick visited Baltimore, Carroll, Cecil, Harford, Somerset, Talbot, Wicomico and Worcester Counties. Rick reports that the training classes he attended were generally well presented and effective. Rick will continue to work with the LBE staff to assess the training curriculum and to provide best practices information.

#### Polling Place Accessibility

Rick Urps continues to work with staff from the local boards of elections to identify opportunities to improve the access to the voting process for all voters. Federal accessibility grant funds are being used to purchase equipment such as handicapped parking signs and parking cones, intercom systems, and pathway lighting. Sign language interpreting services for training and election day are being purchased for elections judges who are deaf. SBE also purchased "Disability Etiquette" booklets to educate election judges on how to interact with voters with disabilities. Also, accessibility funds are being used to purchase, rent, or install wheelchair ramps at several locations.

### **4. Voter Registration**

#### MVA Interface

The MVA interface has been very successful. The local boards were processing 2,500-3,000 records a day, prior to the voter registration closing (March 13<sup>th</sup>). Processing time for the majority of records is about 5 minutes per batch of 25 records. The feedback has been very positive from the local boards.

#### Precinct Register Generation

After the voter registration deadline and once all timely applications are entered into MDVOTERS, the voter registration staff extracts data for the electronic pollbooks. The process was very efficient and smooth, thanks in part to Andrew Johnson of the ePollbook team, who worked with the voter registration staff on this process that has improved in terms of time and quality of output. The LBEs were able to pick up the CF cards for their ePollbooks 24-48 hours sooner than in past elections.

#### ERIC – (Electronic Registration Information Center)

Stacey Johnson and Chere' Evans have been working with the ERIC technical committee to develop the methods of data transfer as well as the reports that will be generated. It is expected that ERIC will be up and running soon.

#### Audits of the Voter Registration System

The Agreed Upon Procedures Audits are ongoing on the voter registration system. This includes audits of access controls to the database as well as the physical access. They inspect business procedures, server and network security, background checks, backup procedures, system logs, and password requirements just to name a few. Reports will be completed by May 1, in advance of the legislative audit.

#### Petition Efforts

SBE provided Delegate Neil Parrott with advanced determinations of sufficiency for *HB 438 – Civil Marriage* and *SB1 – Congressional Districting Plan*. Advanced determination was also granted to Mr. Derek McCoy for HB 438 as well.

### **5. Candidacy and Campaign Finance**

#### MD CRIS Trainings

Jared DeMarinis conducted four training classes on how to use MD CRIS. The classes on March 19, 20, and 21 were held online using WebEx. The March 22<sup>nd</sup> class was held in person at SBE. The Candidacy and Campaign Finance Division will be holding more user training sessions throughout the year.

#### Reporting

On March 23, 2012, the *2012 Presidential Pre-Primary Campaign Finance Report* was due for all political committees participating in that election. This is the first report that MD CRIS is the only available method to file a report. Any filings received after March 23<sup>rd</sup> are considered late and will be assessed late fees. The maximum late fee penalty is \$250.

## 6. Voting Systems

### Electronic Pollbooks.

The local boards of elections have completed the upgrade of the software on all of their pollbooks. The LBEs have also completed the Logic and Accuracy testing of the pollbooks for the election, and the bulk update process will begin Friday March 30<sup>th</sup>. This process updates the 4,937 election day pollbooks with the early voting data. 214 pollbooks have been used for early voting. Staff has been engaged in ongoing work on evaluating the signal strength and quality for the early voting centers. SBE has continued to work with Verizon to improve signal quality where necessary.

### Pre-Election Preparation

Logic & Accuracy testing on the Accuvote-TS and Optical Scan units is complete. Approximate 16,000 voting units were tested and prepared. Due to the last minute changes to the Congressional District 5 and 8 ballots, approximately 2000 units required a second Logic and Accuracy test. LBEs were assisted by the temporary County Technicians, and Cirdan L&A technicians.

### Election Night Results

There has been further testing on the new election night unofficial results reporting process. This has been tested using Logic and Accuracy results. Staff has also been refining the election night procedures for both SBE and the LBEs. A Gotomeeting with the LBEs is scheduled for March 28<sup>th</sup> to ensure LBEs are prepared, and to answer any of their questions.

## 7. Project Management (PM) and Information Technology (IT)

### Program\Project Management Office

Keith Ross is continuing to work on the development and refinement of project management toolbox templates and other resources that are to be used by the agency. Mr. Ross also continued to work on the development and execution of the internal contract monitoring requirements.

### Projects

Work continues on the Inventory Management Project. Staff is in the process of preparing for the 2012 physical inventories at both the local boards and at SBE. The inventories are expected to take place between April and June.

The 2012 Primary Election Call Center support is up and running. The Call Center is supporting SBE and four local boards (Anne Arundel, Baltimore City, Baltimore County, and Prince George's). Queen Anne's County was one local board being supported. They decided to pull out primarily due to the low number of calls, which made the call center logistically and financially infeasible. Staff is continuing to work through issues as they arise with the escalation of calls and other issues. Keith Ross is periodically listening in on the Call Center agent calls to make sure everything is being executed as expected.

Preparations are completed for the coordination of the SBE helpdesk and Command Center functions for Early Voting and Election Day.

### Other

Staff completed the interviews for both the Voting System and Information Technology vacancies. There was a candidate selected for Voting Systems. No candidate was selected for the Information Technology position. As a result, the vacancy will have to be reposted for new candidates.

### Emergency Generator

An emergency standby generator has been rented for the upcoming Presidential Primary Elections in the event of a power outage at SBE. The emergency standby generator has been delivered, installed and tested. Within seconds of a power outage, an automatic transfer switch senses the power loss and commands the standby generator to start and then transfers the electrical load to the generator.

### Disaster Recovery Site Setup at Maryland State Archives

Kurt Snyder worked with the staff at Maryland State Archives to set up 4 client workstations that are images of a SBE workstation. In addition, an Oracle database server was also setup to host the Ballot and Electrack databases. Lastly a sealed GEMS server was relocated over to the disaster recovery site in preparedness for any emergencies on Election night. These workstations and servers can be used by staff to continue critical elections operations in the event that the office facility is inaccessible.



Backup Election Night Results Reporting

Tests on SBE's primary and backup election night results reporting systems were conducted in preparedness for the upcoming Presidential Primary Elections. This backup system will be running concurrently with SBE's primary Election night results reporting system. This time around, the Center of GIS at Towson University will be hosting the website that will be displaying the unofficial results during the Presidential Primary Election night. They have a more robust web hosting architecture than we have used in the past at SBE to better handle the load.

Retrieval of Old GEMS servers from the Local Board of Elections

Daniel O'Connell has visited 9 counties thus far to retrieve their old GEMS servers for appropriate disposal following the Department of General Services (DGS) disposal procedures and guidelines.

Other IT Related Events

The IT staff assisted several local boards of elections:

- Frederick County with resolving issues they had with printing from MDVoters to DYMO label printers.
- Ordered some equipment (workstation and monitor, Canon scanner and 2 DYMO label printers) for Worcester County.
- Assisted Wicomico County with adding a network printer back onto their Local Area Network.

Security Credentials

Janey Hegarty has been busy creating identification badges for temporary staff workers for the upcoming primary elections.

**8. Legislation**

The following are bills that have been introduced this year that are of particular interest:

**SB 597 – Elections – Baltimore City – Election Dates** – This bill changes the Baltimore City Mayoral Election from the year after the Gubernatorial Election to the same year and to be held concurrently with the Presidential Primary and General Elections.

**SB 1078 Election Law – Absentee Ballots – Internet or Facsimile Transmission** – This bill does three things. First, the bill amends §9-306 to require a local board of elections to **mail** an absentee ballot to a voter unless the voter is a military or overseas voter or a voter with a disability, in which case the local board may send the ballot via the Internet. Second, the bill amends §9-308 to require the State Board of Elections (SBE) to provide an ballot marking tool. A ballot marking tool will allow the voter to mark the ballot on his or her own computer using an interface that is similar to voting on the touchscreen voting unit. Once the voter is done, the ballot is printed out with the voter's selections. The voter must mail it back to the local board of elections. Section 9-308 is also amended to state that the online ballot marking tool is not subject to State voting system certification requirements unless certification is required by the U.S. Election Assistance Commission (currently the Commission has ruled that certification is not required for ballot marking tools). Finally, the bill amends §9-310 by creating an exception from the requirement to enclose a specially printed envelope with an absentee ballot. For electronically transmitted absentee ballots, the bill specifies that the local board is required provide the voter with an envelope template, the oath, and instructions for completing and mailing the ballot. As you know, SBE has received public input from a few individuals regarding the online absentee ballot delivery system and the planned implementation of a ballot marking tool within the online absentee ballot delivery system. This bill makes meaningful concessions to the critics of the system by significantly scaling back the use of the online absentee ballot delivery system.

Disability community  
Very interested in this bill.  
Bobbie Muck  
questions security of this method of voting

**HB 694/SB 763- Election Law- Payroll Deductions and Member Contributions- Address of Contributor-** This bill requires an employer that collects voluntary political contributions through payroll deduction to transfer the address in addition to other information required by statute of each contributor to the treasurer of the political committee receiving the contribution. Currently, only the name, date, and amount are forwarded to the treasurer.

**HB 791/SB 1011- Election Law- Declaration of Intent- Establishment of Campaign finance Entity-** This bill requires candidates that file a Declaration of Intent to have established or cause to be established at the time of filing an authorized candidate campaign committee. Currently, the establishment of the political committee is required prior to or at the time of filing a Certificate of Candidacy.

**HB 1007/SB 919- Election Law- Campaign Finance Entities- Retention of Records-** This bill limits the length of time that a political committee has to retain its account books and associated records to the earlier of 10 years after the creation of an account book entry or related record or 2 years after the political committee files a final

report. Currently, a political committee has to keep every record from its establishment until 2 years after it files its final report.

**HB 1103/SB 918- Election Law- Campaign Contributors- Occupation and Employer-** This bill requires that the treasurer report the employer and occupation information of every contributor making contributions in the amount of \$500 or more in the aggregate in the election cycle to a single political committee.

**HB 1275/SB 982- Election Law – Petition Fund Reports- Available Online-** This bill requires that State Board post online the petition fund reports filed.

**HB 1285/SB 1033- Election Law- Campaign Finance – Requirements-** This bill requires that the responsible officers keep their contact information current with the State Board 21 days prior to a campaign finance report. It also allows the responsible officers the option to receive notices by email instead of by first class mail from SBE. Finally, the bill requires campaign contribution receipts be issued within 60 days of receiving the contributions.

**Title 33 State Board of Elections  
Subtitle 07 Election Day Activities**

**33.07.07 Challengers or Watchers (3/20)**

Authority: Election Law Article, §§2-102(b)(4) and 10-311, Annotated Code of Maryland

**.01 Designating Entities.**

A. – B. (text unchanged)

C. Other Designating Entities. If a designating entity *other than the State Board or a local board* intends to distribute instructions to the individual or individuals it designates, the designating entity:

(1) – (2) (text unchanged)

D. (text unchanged)

**.02 Permissive Activities of Accredited Challengers or Watchers.**

A. – B. (text unchanged)

C. During Voting Hours.

(1) (a) (text unchanged)

(b) When determining the location of the accredited challengers and [watcher] *watchers* in the voting room, the Chief Judges shall ensure:

(i) – (ii) (text unchanged)

(c) (text unchanged)

(2) (text unchanged)

D. (text unchanged)

**Subtitle 08 Canvassing**

**33.08.04 Central Count Procedures (2/28)**

Authority: Election Law Article, §§2-104(b)(4) and 11-201, Annotated Code of Maryland

**.02 Special Teams.**

A. (text unchanged)

B. Types. The special teams shall include, but not be limited to, one or more:

(1) (text unchanged)

(2) Ballot inspection teams; [and]

(3) Ballot duplicating teams; *and*

(4) *Ballot verification teams.*

C. (text unchanged)

**.05 Ballot Duplication – Team Method.**

A. (text unchanged)

B. Standard for Duplicating. The ballot duplicating team shall:

(i) [ensure] Ensure that any duplicate ballot reflects, insofar as the team can determine, the intent of the voter who cast the original ballot; and

(2) *Use the standards in COMAR 33.08.02 to determine the intent of the voter.*

C. (text unchanged)

**.06 Ballot Duplication – Automated Method.**

A. *In General. If a local board uses a barcode to generate a ballot that is acceptable for machine tabulation, the ballot submitted by the voter and the ballot generated from the barcode must be referred to a ballot verification team.*

B. *Standard for Verification.*

(1) *The ballot verification team shall compare the ballot submitted by the voter against the ballot generated from the barcode.*

(2) *If the team determines that the ovals marked on both ballots:*

(a) Match, the ballot generated from the barcode shall be tabulated.

(b) Do not match, the team shall duplicate the ballot submitted by the voter according to Regulation .05 of this chapter and notify the State Administrator.

C. *Disposition of Ballots. If the ballot generated from the barcode is tabulated:*



(1) The original ballot shall be replaced by the verified ballot;

(2) The verified ballot shall be counted with the appropriate group; and

(3) Both ballots shall be:

(a) Given a unique identifying number; and

(b) Securely attached to each other.

D. The local board shall follow procedures issued by the State Administrator when tabulating these ballots.

[.06].07 - [.07].08

### Subtitle 13 Campaign Financing

#### 33.13.06 Campaign Accounts (3/20)

Authority: Election Law Article, §§2-102(b)(4) and 13-220, Annotated Code of Maryland

#### .03 Required Elements.

A. (text unchanged)

B. Other Permissible Accounts or Investments. A political committee may, in addition to the checking account required in §A of this regulation, establish additional accounts or temporarily invest campaign funds as provided in this section. Permissible accounts or investments are limited to:

(1) [Insured] *Deposit accounts at a financial institution that are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA);*

(2) - (4) (text unchanged)

C. - E. (text unchanged)

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## Memorandum

**To:** State Board Members  
**From:** Nikki Baines Trella  
**Date:** March 20, 2012  
**Re:** Proposed Changes to Regulations

At the next board meeting, I will propose several additions and changes to the following COMAR provisions:

1. 33.07.07.01 & .02 (Challengers or Watchers)
2. 33.08.04.02 and .05 – .08 (Central Count Procedures)

For each of the proposed additions and changes, I have provided an explanation below.

### *Proposed Changes – Challengers or Watchers (33.07.07.01 & .02)*

When reviewing the recently adopted regulations about challengers and watchers, counsel to the General Assembly's Administrative, Executive and Legislative Review Committee suggested clarifying language to 33.07.07.01C ("Other Designating Entities"). The proposed change incorporates the suggested change and clarifies that the requirements in §C apply to designating entities *other than* SBE and the local boards of elections. The proposed change to COMAR 33.07.07.02C(1)(b) corrects a typo in the previously adopted regulations and makes "watchers" plural.

### *Proposed Changes – Central Count Procedures (33.08.04.02 and .05 – .08)*

If a voter uses the proposed online ballot marking wizard to make selections on his or her ballot, a local board will read the barcode on a voter's ballot and generate a ballot that can be tabulated by the State's optical scan voting unit. I have previously stated that, before the ballot is tabulated, the local boards of elections will verify that the ballot generated from the barcode matches the ballot returned by the voter.

The proposed change to COMAR 33.08.04.05 and new Regulation .06 implement this verification step. The proposed change to Regulation .02 requires that each local board have one or more ballot verification teams. The new Regulation .06 requires that ballots generated from a barcode and ballots returned by the voter must be referred to a ballot verification team. If a team finds that the ballot generated from the barcode matches the ballot returned by the

Memo to State Board members

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voter, the verified ballot is tabulated. If the team finds that the ballots do not match, the team must manually duplicate a ballot using the ballot returned by the voter and immediately notify the State Administrator. The local boards will also be required to follow SBE-issued procedures for tabulating these ballots.

Because of the new regulation on ballot verification, two existing regulations must be renumbered. As a result, Regulations .06 and .07 became Regulations .07 and .08, respectively.

The proposed change to COMAR 33.08.04.05 adds a reference to the existing definition of a vote. A ballot duplicating team is required to use the standards in COMAR 33.08.02 when determining a voter's intent, and it seems appropriate to incorporate in Regulation .05 a reference to the standards.

*Previously Approved Changes – Campaign Finance (33.13.06.03)*

One of the campaign finance related changes previously proposed by the Attorney General's Office was a change to COMAR 33.13.06.03B(1). When the Board approved this language, other changes to the same subsection were already in the regulation approval process. As a result, the approved change to §B(1) could not be submitted for public comment until the other changes became effective. Now that the other changes are effective, I will move forward with publishing the proposed changes to §B(1). Since the State Board has already approved this text, no approval is necessary.

If you have any questions about this proposed text before the board meeting, please do not hesitate to contact me. I will, of course, be available at the board meeting to answer any questions.

All local boards except St. Mary's were represented on the conference call.

### Voter Registration

1. *Voter Registration Applications*: SBE is forwarding daily any voter registration mail it receives or picks up from MVA. Mail received and picked up on Thursday will be sent via overnight mail, and mail received and picked up on Friday will be processed at SBE. Because of the electronic interface with MVA, the volume of paper applications from MVA is low. Please keep Stacey informed of your workload of voter registrations. The precinct pull is scheduled for 12 noon on Sunday, March 18<sup>th</sup>.
2. *OLVR*: With last week's County Bulletin, SBE distributed Baltimore City's OLVR Batch Processing form. Baltimore County has one person assigning OLVR batches to ensure that a batch is not processed by more than one person. If you have any questions about OLVR, please contact Stacey and Cheré and cc: Roger and Janet.

### Voting System

1. *L&A* is continuing. Paul asked each local board to put in the outbox a copy of the GEMS L&A database and send him an email letting him know that the copy is there.
2. *CF Cards*: Master CF cards and instructions will be ready at 12 noon on Monday, March 19<sup>th</sup>. If you are picking up your CF cards (and those of another local board), please email Paul and Andrew and let them know when you will be coming to pick them up.
3. *Election Results Reporting*: Paul will be sending this week information about election results reporting and online refresher trainings. The trainings will be held from March 26<sup>th</sup> – 30<sup>th</sup>.
4. *Cheat Sheet for Early Voting Center Technicians*: This week, Paul will distribute a cheat sheet.
5. *Voter Registration Numbers for GEMS*: Next week, Paul will distribute voter registration numbers for GEMS.

### Inventory

Keith stated that June 30<sup>th</sup> is SBE's deadline for the 2012 annual inventory. This week, he will distribute to each local board's property officer, Election Director, and Deputy Director inventory procedures. The inventory procedures start with verifying equipment touched during L&A testing. After the election, there will be follow up for those units that were not touched during L&A.

### Legislation

Ross explained the purpose and background of Senate Bill 1078. It relates to the online absentee ballot delivery system and is in response to arguments raised by critics of the system. The bill limits the use of the online absentee ballot delivery system to UOCAVA voters and voters with disabilities and clarifies that the ballot marking tool is exempt from certification the envelope requirements when a voter receives an absentee ballot via the online ballot delivery system. The Senate Education, Health and Environmental Affairs Committee scheduled a bill hearing for Thursday, March 15<sup>th</sup>. Ross asked the Election Directors to contact their legislators and ask for their support of this bill.

### Miscellaneous

- a. *Challenger & Watcher Information at Polling Places* – In response to a question, Nikki stated that one copy of the challenger and watcher manual and copies of the opening and closing summaries must be provided to each polling place and early voting center. The manual is a

reference document for the election judges, and the summaries are for challengers and watchers who have questions about the opening and closing processes. The manual and the summaries are posted on SBE's website under "Get Involved" on the side navigation bar. Nikki stated that a revised manual reflecting the recent regulation changes will be available shortly.

b. *Petitions*

1. *Timelines:* In response to a question, Donna provided the timeline for a referendum petition. One-third of the signatures (about 19,000 - 20,000) are due on or before May 31<sup>st</sup>, and the remaining two-third of the signatures (about 36,000) are due on or before June 30<sup>th</sup>. New party and candidate petitions are due on or before the 1<sup>st</sup> Monday in August, and Donna noted that two parties - Americans Elect and the Green Party - are currently circulating petitions.
  2. *Updated Petition Procedures:* Donna explained that the updated procedures are posted on SBE's website. Two significant changes are that the text of the bill must be printed - not taped or stapled - on the back of the signature pages and a signature without a date will be invalidated. In response to a question, Donna stated that the new procedures apply to existing petition seekers, and the local boards should distribute the updated procedures to known petition circulators.
  3. *Referendum of HB 438 - Civil Marriage Protection Act:* The two petition sponsors are now working together. SBE expects that the number of signatures submitted will exceed the minimum number of signatures needed.
- c. *Mock Election before General Election* - In response to a question, Ross stated that no mock election has been scheduled before the general election.
- d. *Refresher Election Judges' Training* - Rick stated that refresher training is required for all judges before the 2012 General Election. He will send out updated refresher training curricula.
- e. *EPB Database for Consolidated Precincts* - Paul will distribute information on how to determine which precinct is the voter's correct precinct if the voter is assigned to a consolidated precinct.
- f. *TS Allocation* - There was a discussion about whether there should be a deadline for determining touchscreen allocation. Ross explained that it is important that the touchscreen allocation be determined as close to the voter registration deadline as possible to accommodate last minute voter registration drives.
- g. *CD5 & CD 8: Reprinted Ballots* - Rick reported that new ballots are being reprinted and asked each local board receiving reprinted ballots to send him an email when the reprinted ballots arrive and let him know that the ballots are ok.
- h. *Certification Program* - Rick asked for thoughts on which classes to offer in 2012.
- i. *Parallel Testing*
1. *Election Day Parallel Testing:* Today, SBE will pick the county whose unit will be used for SBE's election day parallel testing.
  2. *Parallel Testing during Public Demonstration:* For parallel testing during the public demonstration, only one unit is needed. For a primary election, a local board can:
    - i. Vote 50 ballots of one ballot style
    - ii. Vote 25 ballots of two ballot styles (D & R)
    - iii. Vote a total of 50 ballots using all of the ballot styles available on the voting unit (e.g. 20 ballots of the Democratic ballot style, 20 ballots of the Republican style, and 10 ballots of the nonpartisan style)

The next Election Directors' meeting is scheduled for Tuesday, April 17<sup>th</sup> at 10 am.



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DOUGLAS F. GANSLER  
*Attorney General*



KATHERINE WINFREE  
*Chief Deputy Attorney General*

JOHN B. HOWARD, JR.  
*Deputy Attorney General*

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

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March 27, 2012

Robert L. Walker, Chairman  
Bobbie S. Mack, Vice Chairman  
Rachel T. McGuckian  
David J. McManus, Jr.  
Charles E. Thomann  
Maryland State Board of Elections  
151 West Street, Suite 200  
Annapolis, MD 21401

Dear Board Members:

You have asked for legal advice regarding new proposed regulations to enable campaign contributions by text messaging or Common Short Codes ("CSCs"). Proposed COMAR 33.13.11.01-.04. CTIA – The Wireless Association, which administers CSCs and whose members include companies involved in enabling CSCs over wireless networks, submitted comments during the public comment period opposing the proposed regulations as "unworkable" and alleging that the proposed regulations "will place wireless carriers in the middle of a conflict between federal and state campaign finance laws." See Letter of Caleb P. Burns, Counsel to CTIA, to Maryland State Board of Elections (January 17, 2012). At the State Board's February 2012 meeting, I noted my general agreement with the response made to CTIA's comments by Jared DeMarinis, but I did not provide a separate legal analysis of the state and federal conflicts asserted.

Briefly stated, I am aware of no federal campaign finance or privacy law that would prevent compliance with the proposed regulations. Certain changes to what CTIA has described as "standard industry practice" would be required to enable text contributions to a Maryland campaign finance entity, but adoption of the proposed regulations will allow interested firms to devise a model for providing CSC services that is consistent with Maryland law.

*FEC Advisory Opinion 2010-23*

In 2010, CTIA requested an advisory opinion from the Federal Election Commission ("FEC") on whether certain proposed text messaging transactions would meet applicable federal campaign finance requirements. The proposals presented to the FEC were based on the "standard industry practices" of not sharing customer information with third parties, and on billing and payment practices typical among the relevant service providers. According to CTIA, wireless service providers will not, in general, make identifying information about contributors available to connection aggregators and therefore such information would not be available to a federal political committee receiving the text contribution.

Assuming the contributor's identity would not be disclosed, CTIA was essentially asking the FEC whether donations by text messaging could be made pursuant to the rules for anonymous contributions, which federal law allows up to \$50 annually under certain conditions. In that context, other FEC advisory opinions have approved plans for collecting and distributing contributions without disclosing the source, provided certain safeguards were in place, such as a certification from the donor that the contribution is not made from a prohibited source. In effect, a person forwarding a donation from an undisclosed source is to some extent required to vouch for the legitimacy of the donor. By contrast, the proposed COMAR regulations do not authorize anonymous contributions, regardless of amount. *See Proposed COMAR 33.13.11.03A(1)*. Accordingly, the safeguards required in processing an anonymous contribution would not only apply to contributions made in accordance with Maryland law.

A second set of problems with the CTIA proposal involved the incompatibility of the industry's standard billing and payment cycle with federal law requirements as to the time allowed for forwarding contributions to the recipient of the donation. 2 USC § 432(b). Depending on the amount, federal law requires donations to be forwarded to the political committee within either ten or 30 days of receipt. There is no analogous provision in Maryland and therefore no potential conflict.

In sum, the FEC's rejection of CTIA's proposed model for handling text contributions to federal political committees was due not to any fundamental limitation imposed by federal campaign finance law, but rather because of the incompatibility of the industry's "standard practice" with federal rules related to forwarding federal campaign donations, including anonymous ones. The FEC summarized its conclusion as follows:

The Commission concludes that CTIA's proposal for wireless service providers and connection aggregators to proceed *under their current business practices . . .* would not be permissible under the [Federal Election Campaign Act of 1971, as amended] and Commission regulations.

FEC Advisory Opinion 2010-23, p. 1 (emphasis added). Identifying the CSC donor—the change to industry business practices needed for compliance with Maryland law—would create no conflict with federal campaign finance rules.

#### ***Wireless Subscriber Privacy Law***

Telecommunications carriers have a duty to protect the confidentiality of proprietary information of, and relating to, other carriers, equipment makers, and customers. *See* 47 U.S.C. § 222(a). The statute provides for different levels of protection for different types of information, including “customer proprietary network information” (“CPNI”) and “subscriber list” information. With some exceptions, including for billing or collection purposes, disclosure of CPNI requires a written request by the customer. “Subscriber list” information may be disclosed without customer authorization for the purpose of publishing directories. 47 U.S.C. § 222(e). In no circumstance, however, is disclosure of customer information prohibited once the customer's approval or consent has been obtained.

It seems clear that any necessary disclosures could be authorized by voluntary agreements among service providers, content aggregators, and wireless subscribers who wish to donate via text messaging. Possibly, the customer consent requirement might limit the ability of anyone other than the actual subscriber from making a text contribution. If that proves to be the case, wireless users on another's account may not be able to make political contributions by text, but that alone would not cause a conflict of preemption issue. Under California law, text message donations are automatically attributed to the subscriber. *See* California Code of Regulations, Title 2, Div. 6, § 18421.31(e). But until interested firms develop a model for enabling text donations to Maryland campaigns, I cannot say whether a similar rule would be appropriate here in Maryland. Regardless, the proposed COMAR regulations are not in conflict with 47 U.S.C. § 222.

#### ***Other State Law***

To my knowledge, only California and Maryland have sought to authorize and regulate political contributions using CSC, or similar means California's Fair Political Practices, Commission adopted regulations on October 13, 2011. As in Maryland, the

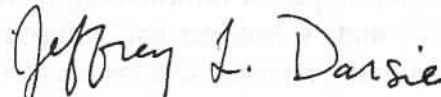
Members of the Board  
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text message functions like a pledge, where transmission of the donation occurs only after the subscriber pays the bill on which the charge appears. As in Maryland, CTIA submitted comments opposing the proposed California regulations and for the same reasons.

***Conclusion***

In my opinion, the proposed regulations do not present any inherent conflicts for wireless service providers, content aggregators, or anyone else. Certainly, businesses that wish to provide or facilitate contributions by CSC will have to adopt, voluntarily, business practices that differ from the industry's current norm in some respects, but the proposed regulations should help to identify what changes will be required in order to legally provide this service in Maryland.

Sincerely,



Jeffrey L. Darsie  
Assistant Attorney General

Cc: Linda H. Lamone, Administrator  
Ross Goldman, Deputy Administrator  
Jared DeMarinis, Campaign Finance Director



**STATE BOARD OF ELECTIONS**  
**P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840**

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Charles E. Thomann



Linda H. Lamone  
Administrator  
  
Ross Goldstein  
Deputy Administrator

**Memorandum**

**To:** State Board Members  
**From:** Jared DeMarinis  
**Date:** February 16, 2012  
**Re:** Final Adoption of Regulations

At the February board meeting, I will present for final adoption the following proposed regulations in Title 33 of COMAR adopted at the November 10, 2011 meeting:

**33.13.11.01-04– Campaign Financing – Electronic Contributions**

Please refer to my memo dated October 27, 2011 for a detailed explanation of the new regulations.

The proposed regulations were published in the December 16, 2011, edition of the *Maryland Register* (Vol. 38, Issue 26). The public comment period closed on January 17, 2012, and SBE received one comment in opposition to the regulations from *CTIA- the Wireless Association*. CTIA claims that the requirement to provide name and address of the contributor would place a significant burden on the wireless carriers. CTIA also notes that recent federal laws prohibiting foreign nationals from making contributions would not be possible to safeguard against by the wireless companies.

The new regulations are in response to the legislation passed by the General Assembly (SB 757). These regulations provide a political committee the necessary elements to meet the standards of the law. Therefore, it is the obligation of the political committee, not the wireless providers, to obtain all of the required information in order to receive contributions using the SMS method (texting). Furthermore, even CTIA states that the political committee can receive the name and address of the text contributor if certain conditions are met.

CTIA also argues that family plans would complicate the ability for wireless provider to know who is the actual contributor. However, the issue of family plans is clearly addressed in the regulation by the requirement that the transaction be approved and authorized by the person. Since payment of text message contribution will not be released to the political committee until after the phone bill has been paid, the authorizing person, i.e. the person whose name is on the bill, has an opportunity to review and even refute that charge prior to the transaction completion. Only after that person has actually paid the bill is the contribution transmitted to the political committee. As a result of the payment, that particular person has authorized the contribution.

Memo to State Board members

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While foreign nationals may be prohibited from making contributions, it is incumbent on the political committee, not the wireless providers, to ensure compliance with this law. This is no different than the use of credit cards in making political contributions. The credit card company is not liable for the transaction or responsible for guarantying the transaction was made by a legal individual. The political committee has to provide the safeguards and make reasonable inquiries to verify its political contributors if it accepts credit card transactions. The current state of text messaging allows for multiple verification and confirmation messages prior to the completion of the transaction. Additionally, foreign cell phone numbers do not have the ability or capacity to send a SMS to an American common short code number.

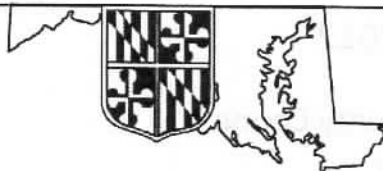
For these reasons stated above, I encourage the State Board members to adopt the proposed changes as they were proposed and include this requirement in the regulations.

If you have any questions before the next meeting, please contact me. I will, of course, be available at the board meeting to answer any questions.

Attachment: Comments from CTIA- The Wireless Association

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Deputy Administrator

**Memorandum**

**TO:** State Board Members  
**FROM:** Jared DeMarinis, Director  
Division of Candidacy and Campaign Finance  
**DATE:** March 29, 2012  
**SUBJECT:** Waiver of late filing fees

Enclosed are the waiver requests, which were submitted by campaign committees that have been assessed late filing fees. The attached Waiver Request Information Page contains an overview of each committee as well as the Administrator's recommendation to the Board.

In the past the Board has considered the following facts in determining whether just cause exists to grant a waiver.

- Administrative error of any kind on the part of the Division.
- The lateness is due to extenuating circumstances, i.e. physical illness or death in the family.
- The late report is the first late report and contains minimal financial activity.
- The fee will cause undue financial hardship
- Computer problems occurred which made timely filing impossible. However, the filer still must have demonstrated a good faith effort to timely file.

Prior to the meeting please review each waiver request. Note the recommendations that you may disagree with or have questions on that you would like to discuss.

§ 13-337. Relief from sanctions.

- (a) Judicial determination – A sanction may not be imposed for failure to file a campaign finance report or to pay a late filing fee if a court of competent jurisdiction finds just cause for the failure.
- (b) Administrative waiver of late filing fee. – (1) On request of a responsible officer subject to the assessment of a late filing fee and with the approval of the State Board, the State Administrator may waive the late filing fee for just cause.  
  
(2) The decision of the State Administrator on a waiver request shall be in writing and state the circumstances surrounding the late filing and the reasons for the decision.  
(3) The State Administrator may make a decision on a waiver request without notice or hearing.

Please feel free to contact me at 410-269-2853 if you have any questions.

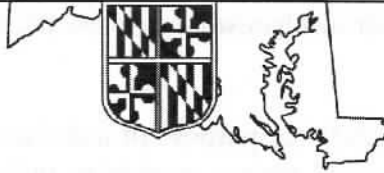
## Board Meeting March 29, 2012

1. Caldwell, (Robert) for County Council
2. Caldwell, Van Citizens for
3. Educators for Progress in District 10
4. Glass, Glen Friends of
5. Hadfield, Jordan Friends of
6. Herbst, Jon for Baltimore County
7. Love, Dayvon Friends of
8. Norris, Linda Friends of
9. Smigiel, Mike Friends of
10. Van Rossum, Marcel J. for County Commissioner
11. Vote Frederick First PAC
12. Vricella, Rob Friends of

## STATE BOARD OF ELECTIONS

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## Memorandum

To: Members, State Board of Elections

From: Jared DeMarinis, Director  
Candidacy and Campaign Finance Division

Date: March 23, 2012

Re: Declaratory Ruling- Aleshire Petition

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On January 27, 2012, Mr. Kristin Aleshire filed a Petition for a Declaratory Ruling in regards to robocalls that occurred during the 2010 Gubernatorial Election. The robocalls were for the purpose of opposing his candidacy for County Council in Washington County. Members of the Washington County Republican Central Committee as well as other elected officials authorized Conquest Communications, a business, to implement the robocalls. The calls used the authority line of Washington County Republican Central Committee. However, Mr. Aleshire states that the full membership of the Washington County Republican Central Committee was not informed of and did not approve the robocalls. This contention is supported by the fact that Washington County Republican Central Committee, which has not paid or acknowledged an outstanding obligation to Conquest Communications. A complaint was filed with the Office of State Prosecutor. That office conducted an extensive investigation into the alleged matter and decided not to bring any charges.

Mr. Aleshire seeks a declaratory ruling on the following questions:

1. Is the robocall that was placed on October 31 and November 1, 2010 by Conquest Communication considered by the Board to be an expenditure and/or contribution?
2. If the campaign activity is deemed an expenditure and/or contribution, should it be reported on a campaign finance report?
3. If the intended recipient was not the Washington County Republican Central Committee and more than one individual participated in the procurement of the robocalls, should those participants have formed a political committee?
4. If the campaign material is not reported and invoice not submitted, what responsibilities does Conquest Communications have to report the expenditure and/or contribution?

Based upon the facts and issues presented, it is my recommendation that the Board should decline to issue a declaratory ruling. Furthermore, it seems clear that a



declaratory ruling is not a proper mechanism to address the questions raised in the petition.

According to COMAR 33.01.02.01 the purpose of a declaratory ruling is for a petitioner to know how the State Board would apply a regulation, order or a statute to any person or entity. The issue presented is whether robocalls made by Conquest Communications constitutes an expenditure and/or contribution to a political committee and what constitutes approval by the Washington County Republican Central Committee. Therefore the petition pertains to the past actions of Conquest Communication and the Washington County Republican Central Committee, not future actions. Declaratory rulings are for prospective matters of interpretation only and not retroactive.

Additionally, the petition does not seek to clarify or establish the rights of the petitioner regarding the application of a statute or regulation, but those of a third party not before the State Board. A declaratory ruling is not for this purpose. A declaratory ruling binds the petitioner, the State Board and local boards to the ruling. A declaratory ruling cannot settle *other's* rights or legal status unless they have voluntarily joined the petition. A ruling by the State Board would not bind Conquest Communication or the Washington County Republican Central committee, nor would it clarify the rights or obligations of Mr. Aleshire.

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## Article 1 – Adoption of Bylaws Generally

### Section 1.1 – Definitions

- A. "Absence" means a duly appointed member is not present at or able to take part in a meeting.
- B. "Member" means a regular and substitute member of the board unless a specific reference to a regular or substitute member is provided.
- C. "Board term" means the four-year term of the board beginning the first Monday in June in the year immediately following a gubernatorial election.
- D. "Vacancy" means a duly appointed member was removed, died, or resigned from the board.

### Section 1.2 – Purpose

These bylaws, adopted by the members of the Anne Arundel County Board of Elections, provide the rules of governance for the board during the conduct of all duties assigned under State and federal laws, regulations, and guidelines and policies of the State Board of Elections (SBE). Further, these bylaws set a standard of personal conduct for members of the board requiring them to conduct themselves in accordance with high ethical standards in order to ensure the public that members are independent of partisan pressures and conflicting interests.

### Section 1.3 – Enactment

- A. These bylaws shall be approved by a majority vote of the full board (including substitute members).
- B. These bylaws are effective and binding on all board members and substitute members as evidenced by each member and substitute member signing this document.
- C. When a new member is appointed to fill a vacancy during a board term, the new member must sign the bylaws.
- D. In order to amend the bylaws, a member must make a motion and present the amendment during a regularly scheduled meeting of the board. The motion to amend the bylaws must be approved by a majority vote of the full board (including substitute members) at the next regularly scheduled meeting of the board.
- E. At the first meeting of each new board term, the bylaws shall be reviewed, amended, and re-enacted consistent with subsection A above.
- F. A copy of the approved bylaws and any amendments shall be sent to SBE.

## Article 2 – Organization of the Board

### Section 2.1 – New Members

New members must be sworn in by the Clerk of the Circuit Court for Anne Arundel County within 30 days of receiving the commission of appointment from the Governor.

### Section 2.2 – Officers

- A. As required by § 2-202 of the Election Law Article, within the first 20 days of a new board term, the board shall elect by a majority vote of the regular members a regular member to serve as president. The duties of the president include:
  - 1. Running the board meetings and setting agendas;
  - 2. Serving as the board's spokesperson for media inquiries; and
  - 3. Acting as the board's primary point of contact for the election director.
- B. Within the first 20 days of a new board term, the board shall elect by a majority vote of the regular members a regular member to serve as a vice president. The vice president shall fulfill the duties of the president if the president is unable to carry out the assigned duties. The vice president shall not be of the same party as the president.
- C. Within the first 20 days of a new board term, the board shall elect by a majority vote of the regular members a regular member to serve as secretary. The secretary shall be responsible for ensuring that board minutes are accurately compiled and transmitted to the State Board of Elections.

### Section 2.3 – Board of Canvassers

- A. As required by § 11-301(a) of the Election Law Article, the members shall serve as the board of canvassers following each election.
- B. These bylaws remain in effect while the members are serving as the board of canvassers.
- C. A president and a secretary shall be elected by a majority vote of the regular members. A substitute member may not serve as president or secretary unless the substitute is serving as a regular member.
- D. The members of the board of canvassers shall take an oath, administered and recorded by the Clerk of the Circuit Court for Anne Arundel County, to canvass and declare the votes cast truthfully and to perform other duties required by law.
  - 1. If there is no early voting the oath must be taken by 5 p.m. on election day (see COMAR 33.08.01.02).
  - 2. If there is early voting the oath must be taken before the start of early voting (see COMAR 33.17.06.01).

- E. In order to take action as a board of canvassers:
  - 1. A quorum, as provided for under section 3.2A, shall be present; and
  - 2. A member of the minority party shall be present.
- F. The rules of order established under section 3.2 below shall be followed at all canvassing sessions. The rules for minutes established under section 3.3E shall be followed for all canvass sessions.
- G. The canvass shall be conducted pursuant to State law, regulations, and instructions issued by SBE.

## Article 3 – Meetings

### Section 3.1 – Time and Location

- A. Regular meetings. The Anne Arundel County Board of Elections shall meet every month on the 3<sup>rd</sup> Thursday at 9:00 a.m., or at such other times as the Board shall determine.
- B. Location. Unless circumstances dictate otherwise, board meetings will be held in the election office.
- C. Public Notice. Except as provided in E of this section, public notice of regular meetings must be provided for at least one week prior to the meeting.
- D. Cancellation of a regular meeting. The president may cancel a regular meeting of the board upon a determination that there is no new business that needs to be acted upon by the board. Notice of cancellation must be given at least one week prior to the meeting.
- E. Special Meetings. The president of the board may call a special meeting. However, no votes may be taken at a special meeting unless three days prior notice has been given to all members, staff and the public.

### Section 3.2 – Rules of Order

- A. Quorum
  - 1. Quorum for all meetings of the board when not constituted as the board of canvassers.
    - a. A quorum must be present in order to hold a meeting.
    - b. A quorum of the board of elections shall consist of:
      - i. A majority of the regular members of the board or a majority of the membership, including substitute members, of the board; and
      - ii. At least one member of each political party (not a legal mandate).
    - c. In the event of a vacancy on the board, a quorum shall consist of a majority of members currently serving on the board.
    - d. There shall be no effect on the quorum when a member of the board abstains or declines to vote or if a member is disqualified from participating under section 4.3 of these by-laws.
  - 2. Quorum for meetings of the board of canvassers.
    - a. A quorum must be present in order to hold a meeting.
    - b. A quorum of the board of canvassers shall consist of:
      - i. A majority of the membership (including substitute members) of the board; and
      - ii. At least one member of each political party.
    - c. In the event of a vacancy on the board, a quorum shall consist of a majority of members currently serving on the board.
    - d. There shall be no effect on the quorum when a member of the board abstains or declines to vote or if a member is disqualified from participating under section 4.3 of these by-laws.
- B. Participation
  - 1. A substitute member of the board shall exercise the powers and duties of an absent regular member, except as limited by law.
  - 2. Any member, including substitute members, may make and second motions.
  - 3. Only regular members may vote on motions.
  - 4. Whenever a regular member is absent, the substitute member of the same party shall assume the role of a regular member for all or the part of the meeting when the regular member is absent.
- C. Public participation at a meeting must be pre-scheduled and pre-approved by the president. The president may exercise discretion in determining whether to allow participation that has not been pre-scheduled and pre-approved.
- D. The board, with the advice of counsel, shall follow the requirements of the Open Meetings Act as specified under Title 10, Subtitle 5 of the State Government Article.

<sup>1</sup> For information and guidance on the Open Meetings Act, see the Attorney General's *Open Meetings Act Manual* (6<sup>th</sup> ed., October 2006) - <http://www.oag.state.md.us/Opengov/Openmeetings/support.htm>.

### Section 3.3 – Meeting Agenda

- A. Each board meeting shall include, at a minimum, the following agenda items:
  1. Declaration of Quorum Present
  2. Approval of Prior Meeting Minutes
  3. Additions to the Agenda
  4. Election Director's Report
  5. Board Attorney's Report
  6. Old Business
  7. New Business
  8. Confirmation of Next Meeting
  9. Closed Session (if needed)
  10. Adjournment
- B. Additional items may be added to the agenda in advance of the meeting at the discretion of the president.
- C. The election director shall provide the agenda to the members and publicly post the agenda at least one week prior the meeting.
- D. Prior to each meeting, the election director shall submit to the board a written report of the activities of the office since the last meeting. The report shall include information on personnel changes, meetings attended, significant correspondence received, voter registration activities, voting system activities, candidate filings, precinct and polling issues, and other projects or initiatives undertaken by the office. An oral summary of the written report shall be provided at each board meeting.
- E. Minutes for both open and closed meetings shall be prepared by the election director pursuant to SBE's *Guidelines for Conducting Meetings and Writing Minutes*<sup>2</sup>. If the election director does not attend the closed meeting, the board attorney or one of the members shall be responsible for preparing the closed meeting minutes.
  1. The complete open meetings minutes and a summary of the closed meeting shall be presented for approval at the subsequent board meeting.
  2. Complete closed meeting minutes shall be held until the next closed meeting for presentation to the board. After approval, the closed meeting minutes shall remain in a sealed envelope in a secure location that only the election director can access.
  3. The election director shall transmit approved meeting minutes to SBE within 5 days of approval.

## Article 4 – Rules of Conduct

### Section 4.1 - Attendance

- A. As provided under § 8-501 of the State Government Article, a member of the board who fails to attend at least 50% of the meetings of the board during any consecutive 12-month period shall be considered to have resigned.
- B. Not later than January 15<sup>th</sup> of the year following the end of the 12-month period, the president shall forward to the Governor and the State Administrator:
  1. The name of the member considered to have resigned; and
  2. A statement describing the member's history of attendance during the period.
- C. In the case where the president fails to attend meetings, the referral to the Governor and State Administrator shall be made jointly by the other two regular members.

### Section 4.2 - Political Activity

- A. Statutory requirements. The members shall abide by the restrictions to political activities provided under § 2-301 of the Election Law Article. See Appendix 1.
- B. Additional requirements.
  1. Members shall place their public duties ahead of partisan, political considerations.
  2. A member may not take an active part in the campaign management of a candidate or any matter that is subject to an election under the Election Law Article.
  3. A member may attend campaign fundraisers held by candidates, political parties, or ballot issue committees provided the member discloses this fact to the board<sup>3</sup> and does not publicly indicate that he or she is a member of the board.
  4. A member may make campaign contributions to candidates or issues on the ballot in an election for which the member will be serving on the local board of canvassers provided the member discloses the contributions to the board.

<sup>2</sup> The guidelines are available on the SBE online library in the local board folder – [www.elections.state.md.us/online\\_library](http://www.elections.state.md.us/online_library).

<sup>3</sup> This notice will provide the other board members with information to determine whether a conflict exists that will require recusal.



5. A member shall be discouraged from but may publicly display support or opposition (including yard signs, bumper stickers, etc.) to candidates or issues on the ballot in any election for which the member will be serving on the local board of canvassers provided the member discloses the displays to the board.
6. Members shall be discouraged from but may wear campaign paraphernalia that shows support or opposition for or against candidates or issues on the ballot in any election for which the member will be serving on the local board of canvassers provided:
  - a. The member discloses this fact to the board; and
  - b. Does not wear the campaign paraphernalia while performing board functions or while wearing a board name badge.
7. Party Activity
  - a. Members may attend party central committee meetings and may consult with party members.
  - b. Members may not serve on an executive committee of the party or assume a role within the party that has decision making authority.
8. Petitions
  - a. Member may sign a petition.
  - b. A member may not circulate petitions.

#### **Section 4.3 – Ethics**

- A. Members shall follow the provisions of the Maryland Ethics laws<sup>4</sup>, including:
  - a. Timely filing the Financial Disclosure Statement<sup>5</sup> required under § 15-601 et seq. of the State Government Article; and
  - b. Adhering to the prohibition against the solicitation or acceptance of gifts or honoraria<sup>6</sup> as required under § 15-505 of the State Government Article.
- B. Disqualification due to Conflict of Interest
  1. A member of the board shall recuse himself or herself and may not participate as to a matter if the member:
    - i. Has a relative with an interest in the matter and the member knows of the interest;
    - ii. Is part of a business entity which has an interest in the matter;
    - iii. Is negotiating employment or has arranged prospective employment with a business entity which has an interest in the matter;
    - iv. Has a direct financial interest in the matter;
    - v. Has provided support through a contribution, volunteering, or a candidate or petition that is the subject of the matter; or
    - vi. Otherwise believes that participation would create a conflict of interest.
  2. A member of the board may seek the advice of the board's counsel as to the presence of a conflict of interest or other good cause for disqualification.
  3. If a member does not voluntarily recuse himself or herself, the other board members may disqualify that member if a unanimous determination is made that the member has a conflict of interest that should disqualify that member from acting on a particular matter.
  4. If a member recuses himself or is disqualified from participating in a matter before the board, the recusal or disqualification and the reason(s) for it shall be recorded in the meeting minutes.

#### **Section 4.4 – Resignation and Vacancies**

- A. A member who chooses to resign shall:
  1. Write a letter to the Governor informing the Governor of the member's decision to resign;
  2. Inform the county central committee of the party with which he or she is affiliated of the resignation; and
  3. Inform the State Administrator of the resignation.
- B. If a member dies, resigns, is removed, or becomes ineligible, the substitute member affiliated with the same political party shall become a regular member and the Governor shall appoint an eligible person from the same political party to be the new substitute member.

<sup>4</sup> See the *Maryland Public Ethics Law Summary* provided by the State Ethics Commission to assist election officials and employees in meeting their obligations to voters, candidates, and political parties. Available on the SBE online library.

<sup>5</sup> Financial Disclosure Statements can now be easily filed online - <https://efds.ethics.state.md.us/>.

<sup>6</sup> See *Ethics and Standards for Election Officials and Employees* for detailed standards of conduct. Available on the SBE online library.

#### **Section 4.5 – Level of Effort**

Members shall expend the time and effort necessary to ensure that they fully understand and perform their duties as board members, their role as members of the local board of canvassers, and generally understand important concepts in the administration of Maryland elections, such as: the process to register to vote; the purpose of provisional voting; general information about the voting system; the absentee ballot process; and important election deadlines.

#### **Section 4.6 – Fiduciary Duty to the Board**

Members have a fiduciary duty of care and loyalty to the board. Members shall put the interests of the board ahead of partisan interests, personal interests, or loyalties to other organizations in an effort to ensure the successful execution of the duties of the board. Members may not share confidential or sensitive information with outside persons or entities.

### **Article 5 – Roles and Responsibilities**

#### **Section 5.1 – The Board**

- A. The board shall carry out all duties assigned to it under the Election Law Article, regulations, and policies and procedures established by SBE. (See *Duties of the Board and Election Director*).
- B. The board shall attend exclusively to top-level policies and plans and shall ensure compliance with mandatory requirements. The board shall not be involved in day-to-day activities of the election office.
- C. Specifically, the board shall:
  1. Govern through broad policies and objectives, formulated and agreed upon by the election director and staff, including assigning priorities and ensuring the agency's capacity to carry out programs by continually reviewing its work.
  2. Account to the public for the services of the agency and expenditures of its funds, including:
    - i. Providing for fiscal accountability, approve the budget, and formulate policies related to contracts from public or private resources
    - ii. Accepting responsibility for all conditions and policies attached to new, innovative, or experimental programs.

#### **Section 5.2 – The Election Director and Staff**

- A. The election director shall carry out all duties assigned to him or her under the Election Law Article, regulations, policies and procedures established by SBE, and duties assigned or delegated by the board. (See *Duties of the Board and Election Director*).
- B. In general, the election director is responsible for:
  1. The day-to-day operation of the office;
  2. Giving direction and leadership toward the achievement of the mission of the Anne Arundel County Board of Elections;
  3. Advising and informing board members of the status of projects and initiatives;
  4. Interfacing between board and staff;
  5. Overseeing the design, promotion, delivery and quality of programs and services;
  6. Recommending the yearly budget for board approval and prudently managing the agency's resources within those budget guidelines;
  7. Effectively managing the human resources of the organization according to authorized personnel policies and procedures that fully conform to current laws and regulations; and
  8. Assuring the board of elections and its mission, programs, and services are consistently presented in a strong and positive manner to relevant stakeholders.

#### **Section 5.3 – Division of Duties – Examples**

- A. Board ---- Direct the process of planning
- B. Board ---- Approve long range goals
- C. Board ---- Approve annual objectives
- D. Board ---- Oversee evaluation of products, services and programs
- E. Board ---- Finalize and approve budget
- F. Board ---- Approve expenditures outside authorized budget
- G. Board ---- Decision to request additional positions
- H. Board ---- Interpret organization to community
- I. Board ---- Administer oath for new employees (within 45 days of employment) – see *Appendix 2*
- J. Staff ----- Formulate annual objectives
- K. Staff ----- Assess stakeholder needs

- L. Staff ----- Prepare performance reports on achievement of goals and objectives
- M. Staff ----- Maintain program records; prepare program reports
- N. Staff ----- Prepare preliminary budget
- O. Staff ----- See that expenditures are within budget during the year
- P. Staff ----- Direct work of the staff
- Q. Staff ----- Hire and discharge staff members
- R. Staff ----- Settle discord among staff
- S. Staff ----- Take minutes at board meetings
- T. Staff ----- Prepare exhibits, material, and proposals for board consideration
- U. Staff ----- Follow-up to insure implementation of board decisions
- V. Joint ----- Provide input to long range goals
- W. Joint ----- Monitor achievement of goals and objectives
- X. Joint ----- Provide organization linkage with other organizations
- Y. Joint ----- Plan agenda for board meetings

#### **Section 5.4 – Delegation of Duties to the Election Director**

The Board delegates the duties designated in *Duties of the Board and Election Director* to the election director.

#### **Section 5.5 – Counsel to the Board**

- A. As required under § 2-205 of the Election Law Article, the board shall retain as counsel an individual who is a registered voter of the county and is admitted to practice law in Maryland.
- B. Pursuant to the retainer contract, board counsel shall:
  - 1. Attend board meetings and all canvass sessions;
  - 2. Attend the biennial conference hosted by SBE and the annual MAEO conference;
  - 3. Participate in pre-election conference calls hosted by SBE;
  - 4. Review major policy guidelines and instructions from SBE; and
  - 5. Generally be available to provide advice when needed.

#### **Section 5.6 – Personnel Management**

- A. As required under § 2-202(b)(2) of the Election Law Article, the board shall hire and supervise the election director.
  - 1. The board shall perform an annual performance evaluation.
  - 2. The board shall follow the requirements of the State Personnel and Pensions Article and any applicable regulations or the county merit system requirements in all matters concerning leave, discipline, or termination.
- B. The election director shall hire and supervise the staff.
  - 1. The election director shall perform or ensure the performance of annual performance evaluations of staff.
  - 2. The election director shall follow the requirements of the State Personnel and Pensions Article and any applicable regulations or the county merit system requirements in all matters concerning leave, discipline, or termination.
- C. Staff may appeal an adverse personnel decision made by the election director to the Board. Issues that may be appealed include:
  - 1. Disciplinary actions;
  - 2. Termination; or
  - 3. Denial of leave.

### **Article 6 – Miscellaneous**

#### **Section 6.1 – Membership to MAEO**

Each member of the board, the election director, the deputy election director, and other staff shall be members of the Maryland Association of Election Officials (MAEO).

#### **Section 6.2 – Training and Continuing Education**

The board shall encourage and support the efforts of the election director and staff to obtain training and continuing education courses to assist the director and staff in the performance of their jobs.

**Section 6.3 – Public Information Act<sup>7</sup>**

When a Public Information Act request is received, the board shall ensure that:

- A. The state Administrator is notified of the request; and
- B. The request is completed in timely manner.

**Section 6.4 – Reimbursement for Travel and Expenses**

- A. The budget for the board shall include funds to reimburse members for expenses incurred while carrying out their duties as members.
- B. Reimbursement for an expense that was not budgeted for must be approved by the president prior to payment.

**Signatures**

Barbara S. Lish 3/15/12  
Member Date

[Signature] 3/15/12  
Witness (Election Director) Date

[Signature] 3/15/12  
Member Date

[Signature] 3/15/2012  
Witness (Board Attorney) Date

K. Jim A 3/15/12  
Member Date

[Signature] 3/15/12  
Substitute Member Date

William G. Wilf 3/15/12  
Substitute Member Date

<sup>7</sup> For information and guidance on the Public Information Act, see the Attorney General's *Public Information Act Manual* (10<sup>th</sup> edition, January 2007) - <http://www.oag.state.md.us/OpenGov/pia.htm>.

## Appendix 1

Election Law Article, Annotated Code of Maryland  
§2-301.

- (a) This section applies to:
- (1) a member of the State Board;
  - (2) a regular or substitute member of a local board;
  - (3) the State Administrator;
  - (4) an employee of the State Board or of a local board, including the election director of a board;
  - (5) counsel appointed under § 2-205 of this title; and
  - (6) an election judge.
- (b) (1) An individual subject to this section may not, while holding the position:
- (i) hold or be a candidate for any elective public or political party office or any other office created under the Constitution or laws of this State;
  - (ii) use the individual's official authority for the purpose of influencing or affecting the result of an election; or
  - (iii) except as provided in paragraph (2) of this subsection, as to any candidate or any matter that is subject to an election under this article:
    1. be a campaign manager;
    2. be a treasurer or subtreasurer for a campaign finance entity; or
    3. take any other active part in political management or a political campaign.
- (2) Notwithstanding paragraph (1)(iii) of this subsection, an election judge may engage in the activities of a political campaign, except:
- (i) while performing official duties on election day; and
  - (ii) by serving as a campaign manager for a candidate or as the treasurer for a campaign finance entity.
- (c) If the State Administrator determines that an individual is in violation of this section, the State Administrator:
- (1) shall suspend the individual from duty until the completion of the next election; and
  - (2) notwithstanding any other provision of law, may make an interim appointment to ensure the orderly administration of this article.

## Appendix 2

Oath for election judges and staff (Art. 1, Sec. 9 of the Maryland Constitution).

I, . . . . ., do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of . . . . ., according to the Constitution and Laws of this State, (and, if a Governor, Senator, Member of the House of Delegates, or Judge,) that I will not directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as . . . . .

**Note:** The oath required by Article I, § 9 of the *Constitution of Maryland* includes the following language: "I, . . . ., do swear (or affirm, as the case may be) that I will support the Constitution of the United States. . ." (Emphasis added) There is no legal distinction between "swearing" and "affirming." Generally, an individual who does not believe in a higher religious being opts to "affirm," while an individual who believes in a higher being opts to "swear." The choice to "swear" or "affirm" is made by the individual taking the oath. Local board members, as well as LBE employees who swear in election judges, should be mindful of the distinction and use the language preferred by the individual taking the oath.



Attendees: Bobbie Mack, Vice Chair  
Rachel McGuckian, Member  
David J. McManus, Member  
Chuck Thomann, Member  
Linda H. Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Jeffrey Darsie, Assistant Attorney General  
Donna Duncan, Election Management Director  
Nikki Trella, Election Reform Director  
Jared DeMarinis, Candidacy and Campaign Finance Director  
Stacey Johnson, Project Manager, MDVOTERS  
Paul Aumayr, Director, Voting Systems  
Keith Ross, Assistant Deputy for Project Management

Also Present: Mary Ann Keeffe, Montgomery County Board of Elections President  
Mary Kiraly, Montgomery County  
Lynn Garland, Montgomery County  
Barbara Sanders, League of Women Voters of Maryland  
Holly Joseph, Montgomery County  
William Edelstein, Baltimore City  
Sara Harris, Montgomery County Board of Elections

**DECLARATION OF QUORUM PRESENT**

Vice Chairman Mack called the meeting to order at 2:03 pm and declared that a quorum was present.

**APPROVAL OF THE PRIOR BOARD MEETING MINUTES**

The minutes of the December 19, 2011 board meeting were presented for approval. The minutes were approved unanimously.

**ADMINISTRATOR'S REPORT**

Ross Goldstein presented the Administrator's Report.

**1. Meetings and Important Dates**

NASED Winter Conference

The National Association of State Election Directors held its annual winter conference in Washington D.C. January 26<sup>th</sup> through January 28<sup>th</sup>. Linda Lamone attended the conference and had the opportunity to gain valuable information on a variety of topics including the MOVE Act, impact of postal service changes, and briefings from Congressional staff on upcoming federal elections legislation.

Election Directors' Meeting

On February 14<sup>th</sup>, SBE hosted an election directors' meeting. Twenty-one local boards of elections participated in the conference call. At this meeting, there were discussions on election night reporting, L&A testing, tasks related to transmitting absentee ballots to military and overseas voters, availability of MDVOTERS, ballot accounting and voting supplies certification, and inventory. A summary of the meeting was provided in the board meeting folder. The next election directors' conference call is scheduled for Tuesday, March 13<sup>th</sup>.

**2. Election Reform & Management**

Absentee Ballots

SBE and the local boards transmitted by the 45<sup>th</sup> day before the election (February 18<sup>th</sup>) absentee ballots to requesting military and overseas voters. The local boards started mailing and faxing to military and overseas voters absentee voting materials on February 14<sup>th</sup>, and on February 16<sup>th</sup>, SBE emailed those voters who requested electronic ballots information on how to access their absentee voting materials. The local boards provided SBE with certifications on the number of ballots to military and overseas voters transmitted by the 45<sup>th</sup> day before the election.

Three counties are participating in a pilot program to automate the absentee ballot mailing process by utilizing the services of a vendor, Runbeck Election Services, which has equipment capable of printing ballots and compiling ballots instructions and return envelopes into the voter's properly addressed outgoing envelope. The ballots for the military and overseas absentee voters were sent by Runbeck by the 45<sup>th</sup> day deadline.

Absentee voting materials for domestic, civilian voters will be transmitted on or about March 6<sup>th</sup>. SBE has learned from other jurisdictions that sending absentee ballots too early and before voters are focused on the election leads to an increase in requests for replacement ballots.

### 3. **Voter Registration**

#### MVA Interface

Over the weekend of February 18<sup>th</sup>, the MVA interface was successfully loaded into MDVOTERS. This interface will streamline the process of accepting voter registration data from MVA. Training for the local boards began Tuesday, February 21, 2012. The training will consist of how the local boards are to process the data provided by MVA.

This software release also includes enhanced features for managing election judges.

#### Pew Center on the States

Pew released its report called "Inaccurate, Costly, and Inefficient" regarding state voter registration lists. The report highlights the need for states to share information for a more accurate voter list as well as the need to reduce the cost and time for processing new voter registration applications. One recommendation to alleviate high costs and inaccuracies is the implementation of online voter registration. Maryland will be moving forward with this initiative in July of 2012. The other recommendation is more sharing of voter registration information among the states. That effort is being addressed through the Electronic Registration Information Center (ERIC) project.

#### ERIC (Electronic Registration Information Center)

Stacey Johnson has been working with the ERIC technical committee to develop the methods of data transfer as well as the reports that will be generated. It is expected that ERIC will be up and running in the spring of 2012.

### 4. **Candidacy and Campaign Finance**

On February 6<sup>th</sup>, ELECTTrack EFS was disconnected making MD CRIS the only method a political committee may use to file campaign finance reports. We are on track for the final data conversion of all outstanding filed reports in ELECTTrack into MD CRIS.

On February 6, 2012, the semi-annual Contribution Disclosure Form was due. The form is required to be filed by any person who either: (1) does business with the State involving consideration of \$100,000 or more and makes campaign contributions of \$500 or more; or (2) provides lobbyist compensation and makes campaign contributions greater than \$500. The Candidacy and Campaign Finance Division received over 260 disclosure forms from qualifying persons.

### 5. **Voting Systems**

#### Ballot Printing

Two vendors – ES&S and Single Point (formerly Digital Ink) – printed over 500,000 absentee and provisional ballots and test decks. Each printer was allocated a similar quantity of ballots, and all of the local boards received their ballots by the established deadline. Rick Urps coordinated the ordering process with the local boards and the vendors.

#### Electronic Pollbooks.

The local boards of elections have continued to upgrade the software on all of their pollbooks. Approximately 80% of the 6,300 pollbooks have been upgraded, and this effort is on target to be completed by early March. SBE has also been working with ES&S with regards to future upgrades to the pollbooks.

Staff has been engaged in ongoing work on evaluating the signal strength and quality for the early voting centers. SBE has worked with Verizon to improve signal quality where necessary.

#### Election Night Results

There has been further testing on the new election night unofficial results reporting process. The new process, which will periodically and automatically upload results from the local boards to SBE, was

first tested in January as part of the mock election. At that time, there were some issues with exporting the results and posting those results to the SBE website. SBE has made some changes and is continuing to test the new election night results reporting process. SBE has also been working with the standard results reporting process that has been used for the last several years to ensure that it is ready in case we are not satisfied with the performance of the new process.

#### Pre-Election Preparation

SBE has ordered election supplies and materials for the primary election, and many of those have been delivered – this includes items such as touchscreen and electronic pollbook printer paper rolls, new headsets for voters using the audio ballot, and tamper tape. Staff has also completed the process of changing the encryption keys to the voting system, which is done prior to every election.

Logic & Accuracy testing has begun in a number of local boards. The local boards are being assisted by the temporary County Technicians who start eight weeks before election day and stay until two weeks after the election. Each local board has a County Technician.

## **6. Project Management (PM) and Information Technology (IT)**

### PM - Mock Election

The statewide mock election was completed. The mock election provided a meaningful test of the upgraded pollbook software and connectivity. Lessons learned were completed using Survey Monkey for the local boards in addition to a separate SBE focused session with SBE and Cirdan resources. As a result of the feedback, staff has and will continue to identify improvements for the upcoming primary election. Updates identified and made include changes to the *Conducting the Election Guide* and deciding to have open conference lines throughout the entire day during early voting and election day. This was something that was tried for the first time during the mock election, and everyone who replied shared that this was a great communications vehicle.

### PM - Inventory

Work continues on the Inventory Management Project. Staff is in the process of preparing for the 2012 physical inventory at both the local boards and at SBE. The inventories are expected to take place between April and June. In addition, staff is in the planning phases for the efforts required to implement a new inventory system in the summer of 2013. Keith Ross visited the Department of Public Safety and Correctional Services to learn more of their inventory workflow.

### PM - Call Center

Staff is preparing for the implementation of the call center support for the upcoming 2012 Presidential Primary Election. The call center vendor will support five local boards in addition to two SBE phone lines (toll free and local numbers). The five local boards include Anne Arundel County, Baltimore City, Baltimore County, Prince George's County, and Queen Anne's County.

### Other Project Management Tasks

- Continued the development and refinement of project management toolbox templates and other resources that are used for the agency.
- Continued the work on the Information Technology Strategy Board.
- Continued work on the development of the contract monitoring requirements.

### IT - Ballot Production

Natasha Walker has completed ballot production for the 2012 Presidential Primary Election. In this primary election, there are 122 county specific ballot styles and 16 federal only ballots across the State. For every county specific ballot style, there are 6 different variations - a Touchscreen ballot, an Optical Scan ballot, a Web ballot, a contingency ballot, a screen shot of the touchscreen for local board's specimen ballots, and an audio ballot. This means that Ms. Walker managed 732 versions of the ballots with the assistance of a ballot programmer from ES&S.

This year, the process of recording the audio ballot was faster, more efficient and had fewer issues than in previous years. This was mostly due to ES&S bringing the audio ballot studio in-state and using local voice talents. In the 5 elections that we have been recording audio ballots, this is the first time that we have had local boards approve their audio ballots without needing a single correction. We expect to use the same studio and voice talents for recording the audio ballot for the general election.

CRIS File Format

Kurt Snyder will be working to create two automated processes to convert both ELECTrack and Vendor files to the new Campaign Reporting Information System format.

Other IT Related Events

- Successfully renewed several SBE hardware/software licenses and support agreements
- Successfully applied Microsoft Security updates for the month of February 2012 on SBE Server Systems
- Disabled SFTP access for all EFS/Electrack committees accounts.
- Assisted Cecil County with setup and configuration of new Windows 7 client workstations.
- Retrieved 2 Old GEMS servers from Cecil County for disposal.

**7. Legislation**

The following election law bills have been introduced this year:

**HB 173 – Election Law – Voter Registration Agencies – Electronic Signatures** - This bill authorizes an applicant registering to vote at a voter registration agency (such as the Department of Health and Mental Hygiene or the Department of Human Resources) to consent to the use of an electronic copy of the applicant's signature that is on file with the voter registration agency as the applicant's signature for the application being submitted. Currently, registering to vote at a voter registration agency is paper based with applications being submitted either to the assisting agent or mailed in by the applicant. MVA will be electronically transmitting voter registration data to SBE beginning mid-February. This bill will authorize the other voter registration agencies to transmit the applicant's signature which will facilitate in the accurate and timely submission of voter registration applications.

**HB 127 – Maryland Referendum Integrity Act** - This bill requires petition signers to complete the required information on the petition in their own handwriting. It requires that the petition circulator have each petition signature page notarized and prohibits an individual from being a petition circulator if convicted of an election related crime. This bill also lengthens the deadline to seek judicial review from 10 days to 30 days and prohibits a petition circulator from receiving any form of compensation based on the number of signatures collected. Testimony by staff noted that providing 30 days to seek judicial review could conflict with the local board's ability to send absentee ballots 45 days before the election.

**HB 138 – Carroll County - Polling Places - Electioneering Boundaries** - This bill restores the no-electioneering boundary back to 100 feet in Carroll County as opposed to the option for the no-electioneering boundary to be 25 feet. In testimony submitted on this bill, we noted that restoring uniformity would help avoid confusion for statewide campaigns and the political parties which, have to inform election day workers of the rules for electioneering. Further, restoring the traditional 100 foot no electioneering zone will be beneficial for voters who have an expectation of a meaningful no-electioneering zone to allow them easy access to a polling place.

**HB 225 – Election Law – Special Elections – Voting by Mail** - This bill authorizes, but does not require, the use of voting by mail for a special election. The determination to hold an election by mail is made by the Governor in the case of a special election to fill a vacancy for the office of Representative in Congress or the county council or commissioner in the case of a vacancy in local office (county council, commissioner, or school board). The bill specifies that the local board of election shall provide a vote-by-mail ballot to each eligible voter at least 14 days prior to the special election (no application is required) and provide an opportunity for in person accessible voting at one voter center for six days. Testimony noted that the voter turnout for special elections is extremely low.

- 6.0% - 2011 Prince George's County Council 6<sup>th</sup> District Special Election
- 10.14% - 2009 Montgomery County Council 4<sup>th</sup> District Special Election
- 6.7% - 2008 4<sup>th</sup> Congressional District in Montgomery County; and
- 4.4% - 2008 4<sup>th</sup> Congressional District in Prince George's County

Despite the low turnout, the cost of holding a special election is considerable and includes hiring election judges, setting up polling places, deploying equipment, and other associated election costs. In comparison, vote-by-mail avoids those costs and the associated administrative burden while potentially increasing voter turnout for the special election by providing the opportunity to vote directly to the voter.

**HB 42 – Election Law Petitions – Resubmission of Signatures** - This bill authorizes an individual whose petition signature is not validated and counted during the initial verification process to resubmit the signature under certain circumstances. To facilitate this, the bill requires SBE to provide public notice of the names of individuals whose signatures on a petition are not validated and counted. Testimony submitted on this bill



points out the administrative difficulties posed by this legislation – especially the impact on the various verification deadlines.

Ms. McGuckian asked whether any of the proposals submitted to SBE by the Attorney General's Office, based on the work of Commission were introduced during this legislative session. Mr. DeMarinis responded that the General Assembly had formed its own commission on campaign finance that has taken up a few campaign finance issues. However, the recommendations about slates were tabled for more in-depth review.

Ms. Mack took a moment to extend condolences to Mary Wagner on the loss of her father and noted his impressive accomplishments.

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

Mr. Darsie informed the Board that on February 17th the Circuit Court for Anne Arundel County awarded summary judgment to the State Board of Elections in *Doe v. Maryland State Board of Elections*. The case involves a challenge to the SBE's decision to certify a petition to refer the Maryland DREAM Act to the voters at the November 2012 General Election. The plaintiffs asserted that the DREAM Act was an appropriations bill and therefore could not be subject to referendum under Article XVI, §2 of the Maryland Constitution.

The Court of Appeals will hear arguments related to SBE's petition signature standards on March 2, 2012. The cases are *Maryland State Board of Elections v. Libertarian Party of Maryland* and *Burruss v. Board of County Frederick Commissioners*. The cases involve the correctness of the State Board's guidelines interpreting the *Doe* and *Fire-Rescue* cases as to petition signature standards and whether those requirements were constitutional.

Finally Mr. Darsie updated the Board on redistricting related lawsuits. Specifically, in *Fletcher v. Lamone*, a three-judge federal court panel unanimously upheld Maryland's redistricting plan finding that the lines were constitutionally drawn and did not intentionally discriminate against African-American voters. The court also upheld Maryland's application of the "No Representation Without Population Act" which corrects Census data by counting inmates at their last known residence instead of prison.

#### **APPROVAL OF REGULATIONS**

First, Nikki Trella presented the following proposed regulations:

1. 33.04.02.01 – .03 (Inspection and Copying of Public Records – Confidentiality of Certain Information)
2. 33.04.03.01 (Inspection and Copying of Public Records – Requests from Correctional Facilities)
3. 33.08.04.05 (Canvassing – Central Count Procedures)
4. 33.11.02.01 (Absentee Ballots – Applications)
5. 33.13.08.02 (Campaign Financing – Independent Expenditure Requirements)
6. 33.13.09.02 (Campaign Financing – Electioneering Communication Requirements)
7. 33.16.03.06 (Precincts, Polling Places, and Facilities – Polling Places)
8. 33.16.02.01 (Provisional Voting – Provisional Voting Documents and Supplies)
9. 33.16.05.03 & .05 (Provisional Voting – Canvass of Ballots – Procedures)

Ms. Trella referred the Board to her January 10<sup>th</sup> memorandum and provided an overview of the regulations. First, the regulations treat a voter's email address like other personal information that a voter may request to keep confidential. Second, the regulations adopt changes to the independent expenditure and electioneering communications provisions proposed by Common Cause that define how the required information in an entity's regular, periodic reports or website meet the statutory requirement that the information be provided in a "clear and conspicuous manner" or "posted." Specifically, the regulations provide that if an entity includes independent expenditures or electioneering communications disbursements in its regular, periodic reports to shareholders, members, or donors, the text must be at least 10 point font. If an entity posts these disbursements on its webpage, the link on the homepage must be labeled "Independent Political Spending." The proposed regulations also permit a helper of a voter with disabilities or elderly voter to seek a polling place reassignment to the polling place where the helper is providing assistance. Finally the proposed regulations make technical changes and corrections. Ms. McGuckian made a motion to adopt the proposed changes, and the motion was seconded by Mr. Thomann. The motion was unanimously approved.

Next, Ms. Trella presented the following regulations for final adoption:

1. 33.01.01.01 – Definitions; General Provisions – Definitions
2. 31.07.07.01 – .04 – Election Day Activities – Challengers or Watchers (new)
3. 33.07.08.01 & .03 – Election Day Activities – Challenging Voters
4. 33.17.06.08 (new) & .09 – Early Voting – Early Voting Activities
5. 33.11.03.08 – Absentee Ballots – Issuance and Return
6. 33.11.04.03 – Absentee Ballots – Canvass of Ballots – Procedures
7. 33.13.06.03 & .05 – Campaign Financing – Campaign Accounts

## 8. 33.13.10.01 &amp; .02 – Campaign Financing – Prohibitions (new)

Ms. Trella referred the Board to her January 5<sup>th</sup> memorandum and provided an overview of the comments received on the regulations during the public comment period. On the regulations regarding challengers and watchers, a comment was received by Patti Jackson, Election Director for the Worcester County Board of Elections. Ms. Jackson commented favorably on the provision requiring the designating entity to provide the local board with copies of the completed challenger and watcher forms. Ms. Jackson notes that this information will help the local boards better determine the layout of the polling place and respond to complaints and questions. Robert Ferraro, Co-Director of SAVE Our Votes, also commented on the same provision. Mr. Ferraro wrote to oppose the provision because it is burdensome, restricts the flexibility of last minute recruitment and assignments, and would cause confusion and bad will. Ms. Trella noted that the requirement only applies to the designating entity. In other words, a challenger and watcher who has a completed form will always be granted access to the polling place. Ms. Mack stated that the provision in essence serves as an RSVP to allow the local boards to be able to plan for challengers and watchers. Ms. McGuckian asked why not simply require the challengers and watchers to provide a copy of their completed form if one of the goals was to have information about who was at the polling place, Ms. Trella stated that election judges are instructed to keep a log of challengers and watchers, but this does not always happen. Ms. McGuckian made a motion for final approval of the proposed changes, and the motion was seconded by Mr. Thomann. The motion was unanimously approved.

Finally, Jared DeMarinis presented one regulation for final adoption: 33.13.11.01 – .04 – Campaign Financing – Electronic Contributions. The regulation related to electronic contributions made via text messaging. Mr. DeMarinis noted that during the public comment period one comment was received in opposition to the regulations. The comment was from an attorney representing CTIA – The Wireless Association. The concerns raised were that it is not possible for the wireless carriers to determine who made the contribution if the contribution was made on an account with a family plan. Further, wireless providers cannot prohibit contributions from foreign nationals, and generally, providing the name and address of contributors is burdensome. Mr. DeMarinis responded that the regulations place the obligation on the political committees and provide a framework for them to receive contributions through text messaging. Mr. McManus asked for advice from the Attorney General's office to ensure that there is no conflict between the regulations and federal law. Mr. McManus proposed tabling the regulations until such advice is received. Mr. Thomann seconded the motion, which was unanimously approved.

**WAIVERS OF CAMPAIGN FINANCE LATE FEES**

Jared DeMarinis presented 36 campaign finance late fee waiver requests that the State Administrator had recommended for approval. Mr. DeMarinis noted that many of the waiver requests were a result of committees have difficulty using the new system. The following committees requested a late fee waiver:

1. A Shore Team Slate	22. Greater Capital Area Political Action Committee	43. Pappas, Jonathan Friends Of
2. Adams, Earl friends of	23. Guzzone, Guy Friends of	44. Parker, Lauren Friends Of
3. Ali, Saqib Friends Of, A4410	24. Hough, (Michael) For Delegate	45. Pena-Melnyk, Joseline Friends Of
4. Anderson, Curt Team	25. Hughes, Charlotte Council of Empowerment for, A7222	46. Plastic Surgery PAC MD
5. Anne Arundel County Republican Central Committee	26. Jennings, J. B. Friends Of	47. Progressive Maryland PAC, A4353
6. Barnes, Ben Friends of	27. Judges - Baltimore City Sitting Judges Committee Slate	48. Queen Anne's County Republican Central Committee, A159
7. Black, Lee For County Council, Dist. 9, Friends Of, A7971	28. Kitchen, Joseph Committee for	49. Ramos, Odette Friends Of
8. Brennan, Madonna For Maryland	29. Knotts, Tony Friends To Elect, A1919	50. Reed, Jeff Friends of
9. Catrino, David L. Citizens to Elect	30. Knowles, (Eric) For Governor, A8379	51. Safer Roads in PAC Maryland
10. Charles County Democratic Central Committee, A124	31. Kushnerick, Bill Citizens for, A7394	52. Savoy, Brenda Citizens for, A7429
11. Chester, Charles Citizens for	32. Lawler, Theresa A. Committee To Re-Elect Orphans Court Judge	53. Sigaty, Mary Kay Friends Of
12. Collyer, Eleanor Brd Of Ed, A8069	33. Mathias, Jim Friends Of	54. Smith, Will Friends Of
13. Donoghue, John Friends Of, A3473	34. McCann, Mary Citizens	55. Stallings, Sugar Friends of
14. Dorchester County Republican Central Committee	35. MCGEO United Food & Commercial Workers Local	56. State Law Enforcement Officers Labor Alliance
15. Easter, Jim Committee, Friends		57. Stukes, Melvin L. People For
		58. Theus, J'Neanne Friends of
		59. Thorpe, Lamar A. Citizens For,



Of	1994 Active Bal	A6922
16. Estrada, Robert Citizens For, A8161	36. McKay, (Tommy) For Southern Maryland, A3654	60. Tracy-Soper, Nova Re-Elect Treasurer
17. F.O.P. Pac of Maryland	37. McKay, Mike Citizens to Elect	61. Tracy-Soper, Nova Re-Elect Treasurer, A4617
18. Fleckenstein, Thomas Friends Of, A873	38. McMillan, Herb Friends Of	62. Ulman, Ken Friends Of
19. Friends of Chimes PAC, The	39. Moore, Ethan Friends of, A7380	63. Volke, Nathan Friends of
20. Goldberg, Scott for Maryland	40. Morgan, Todd Friends of	64. Waugh, Steve Friends Of
21. Greater Baltimore Board of Realtors PAC	41. Nottingham, Andre Friends of	65. Weinstein, Charlotte K. For County Council
	42. PAC For Metro Washington Chapter Of ABC	

Mr. McManus made a motion to approve the recommended waiver requests, and the motion was seconded by Ms. McGuckian. The motion was unanimously approved.

**REQUESTS FOR CONFIDENTIALITY**

COMAR 33.04.02 permits certain categories of individuals to request that their residence address and telephone numbers as contained in election records be kept confidential. Mr. DeMarinis presented 21 requests all on behalf of individuals who fall under the law enforcement category of individuals entitled to request confidentiality.

1. Clarke Ahlers	12. Sherri Krauser
2. Anne Albright	13. Cheryl McCally
3. Krystal Alves	14. William Nicklas
4. Edward Andrews	15. Nancy Purpura
5. Alison Asti	16. Joseph Quirk
6. Elizabeth Bowen	17. Michael Reed
7. DaNeeka Cotton	18. Steven Salant
8. John Davey	19. Brian Shockley
9. David Densford	20. Joseph Stanalonis
10. Hassan El-Amin	21. David Young
11. Richard Jordan	

Ms. McGuckian made a motion to grant the request for confidentiality, and the motion was seconded by Mr. Thomann. The motion was unanimously approved.

**APPROVAL OF LOCAL BOARD BYLAWS**

Ross Goldstein presented Montgomery County Board of Elections' bylaws to the Board for consideration and approval. Mr. Goldstein stated that the bylaws contained all the required provisions. The primary change to the bylaws was the provisions regarding permissible political conduct by board members. Specifically, Montgomery County Board took a more restrictive approach to political activity including limiting public support for or opposition to candidates or issues on the ballot. Ms. McGuckain made a motion to approve the Montgomery County Bylaws, and the motion was seconded by Mr. McManus. The motion was unanimously approved.

**OLD BUSINESS**

There was no old business.

**NEW BUSINESS**

Vice Chairman Mack stated that three individuals had requested the opportunity to address the Board. First, Ms. Mack invited Mary Kiraly to speak. Ms. Kiraly discussed the changes being made to the online absentee ballot delivery system and the fact that it will include an online ballot marking tool. Ms. Kiraly asserted that it constitutes a new absentee ballot system and as such requires certification. Further the ballot marking tool raises privacy and security concerns. In support of her position that the absentee ballot delivery system requires certification, Ms. Kiraly notes that the ballot marking tool would work the same as an AutoMark unit which requires certification. Ms. Kiraly also stated that the AccuVote TS voting system was not certified when procured by SBE. The lack of certification was part of a citizens' lawsuit that is still in the courts and the failure to certify led the Administrator to withhold payments to Diebold in 2004. Finally, Ms. Kiraly stated that the contemplated system would create confusion about which ballot (the one created by the voter or the one duplicated using the barcode generated by the ballot marking tool) is the official ballot of record.

Next William Edelstein addressed the Board. He also believes strongly in the requirement for certification of the ballot marking tool. Mr. Edelstein cites the HAVA definition of "voting system." The definition includes "software, firmware, ... used to define ballots." Mr. Edelstein also cites various provisions of Title 9, Subtitle 1 of the Election Law Article. Mr. Edelstein stated that the fact that the EAC is refusing to certify just the ballot marking tool does not mean that certification is not required – instead it means that the ballot marking tool along with the rest of the system must be certified. Mr. Edelstein noted that the District of Columbia Board of Elections developed a supposedly secure system for downloading ballots to overseas voters. The system was hacked in two days by University of Michigan computer scientists. Finally, Mr. Edelstein urged the board to require the staff to publish all relevant information about the system including software design, who the designer is, security aspects, testing procedures and vendor lists. Ms. Mack noted that the system will not be implemented until November and that staff has been providing information.

Finally, Ms. Joseph spoke about the fact that funds still have not been appropriated for the procurement and implementation of a new optical scan voting system. She requested the Board to use its influence to persuade the Governor to provide funding for an optical scan system. Mr. McManus noted that the Governor sets the budget and determines the priorities for funding. The Board has no influence over the budget process. Mr. McManus also stated that as soon as funding is available SBE will move forward to implement the new system.

#### **SCHEDULING OF NEXT MEETING**

The next meeting is scheduled for March 29<sup>th</sup> at 2:00p.m.

#### **ADJOURNMENT**

Ms. Mack adjourned open session of the meeting at 3:05 pm.

#### **CLOSED MEETING**

Ms. Mack called for a motion to close the board meeting under State Government Article, §10-508(a)(13) to discuss information regarding the budget request submitted by the State Board of Elections to budget request. Mr. Thomann made a motion to close the meeting, and Mr. McManus seconded the motion. The motion passed unanimously.

During the closed session members were briefed by Valerie O'Connor, Chief Fiscal Officer, on specific aspects of SBE's budget request, why certain requests were made, and the corresponding 2013 budget allowance.

In addition to the board members, Ms. Lamone, Ms. O'Connor, Mr. Goldstein and Mr. Darsie were present.

No actions were taken.