

Update

MEMORANDUM

June 21, 2012

TO: Government Operations and Fiscal Policy Committee
FROM: Susan Farag, Legislative Analyst *SOF*
SUBJECT: **Update:** Board of Elections activities

The following are expected to attend today's worksession:

- Mary Ann Keeffe, President, Board of Elections (BOE)
- Donice Jeter, Vice President, BOE
- Nancy H. Dacek, Secretary, BOE
- Margaret Jurgensen, Elections Director, BOE

2012 Elections

On April 3, 2012, BOE conducted the 2012 Primary Election. The 2012 General Election will take place on November 6, and the deadline to register to vote is October 16. Committee members may wish to receive a report on the conduction of the Primary Election as well as an update on the preparation for November's General Election.

Voter Outreach

Council staff understands that the Chair is interested in understanding how the Board encourages voter registration, particularly youth registration. On ©1, Board staff provided information about programs to encourage voter registration and on ©2 is a January 24 press release describing registration drives held before the Primary Election.

Absentee Voting

In February, the Chair received a letter from Mary Kiraly, former member of the Board of Elections (©4). Ms. Kiraly expressed concerns with the absentee ballot process that the State Board had considered implementing. Council staff understands that the process Ms. Kiraly referred to was contained in Senate Bill 1078 (see comments about SB 1078 from the State Board on ©7), which did not become law. Committee members may wish to ask the Board to describe the absentee ballot process that will be used for the November General Election.

This packet contains:

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All residents of Montgomery County may register to vote, if they meet the following requirements:

- County resident
- United States citizen
- At least 16 years of age (you may register to vote at 16 but cannot vote until at least 18 years of age by the date of the next general or special general election)
- Have not been convicted of a felony, or if you have, you have completed serving a court-ordered sentence of imprisonment, including any term of parole or probation for the conviction.

Permanent Registration Application Sites

Voter Registration Applications are available in Montgomery County at :

- Montgomery County Post Offices
- Montgomery County Public Libraries
- Montgomery County Public Schools
- Montgomery College Campuses
- Montgomery County Government Regional Services Centers
- Montgomery County Community Health Centers
- Montgomery County Aging and Disability Services
- Montgomery County MVA Offices
- Montgomery County Licensing
- Montgomery County Register of Wills

Montgomery County Board of Elections partners with Montgomery County Public Schools and conducts a student driven voter registration drive. It is held in April, encompassing Student Leadership Week, and concludes on the Student Member of the Board of Education Election Day.

Schools select at least three qualified students to be trained as registrars by personnel at the Board of Elections. These students, along with an adult sponsor at their school, work with the principal to establish a plan for voter registration. They set a registration goal based on their school's 1994-current voter registration data. This program has been in place since 1972 and has been recognized a national model.

Voter registration registrars are trained weekly for volunteer groups to extend the opportunity to registrar to vote. Specific example is at Casa de Maryland staff have been trained as registrars and conduct registration or prior to every election the Student Future Voters and their parents conduct voter registration at the libraries in the community. The Board staff do not conduct separate voter registration drives.



Board of Elections
Montgomery County
MARYLAND

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MEDIA ADVISORY
For Immediate Release

Contact: Marjorie Roher, 240-777-8525

For Immediate Release: January 24, 2012

MONTGOMERY COUNTY TO HOLD VOTER REGISTRATION DRIVES AT PUBLIC LIBRARIES

Volunteers from the Future Vote Program of the Montgomery County Board of Elections will conduct voter registration drives on Saturdays, from 11 a.m. to 1 p.m., and Sundays, from 1 p.m. to 3 p.m., during January and February at local public libraries according to the following schedule:

Saturday, January 28:

Aspen Hill Library

4407 Aspen Hill Rd., Rockville, MD 20853,
301-871-2097 (TTY)

Little Falls Library

5501 Massachusetts Ave., Bethesda,
301-320-8813 (TTY)

Quince Orchard Library

15831 Quince Orchard Rd., Gaithersburg,
MD Relay Service (711)

Sunday, January 29:

Bethesda Library

7400 Arlington Rd., 240-777-0970,
301-657-0840 (TTY)

Silver Spring Library

8901 Colesville Rd., 240-773-9420,
301-565-7505 (TTY)

Marilyn J. Praisner Library

14910 Old Columbia Pike, Burtonsville, MD,
240-773-9460, MD Relay Service (711) TTY)

Saturday, February 4:

Chevy Chase Library

8005 Connecticut Ave, MD Relay Service (711)

Long Branch Library

8800 Garland Ave., Silver Spring,
301-565-7662 (TTY)

Twinbrook Library

202 Meadow Hall Dr., Rockville,



240-777-0904 (TTY)

Sunday, February 5:

Rockville Memorial Library

21 Maryland Ave., 240-777-0140,

240-777-0902 (TTY)

Wheaton Library

11701 Georgia Ave., 240-777-0678,

301-929-5524 (TTY)

Germantown Library

19840 Century Blvd., 240-777-0001;

MD Relay Service (711) (TTY)

Saturday, February 11:

Damascus Library

9701 Main St., 301-253-0148 (TTY)

White Oak Library

11701 New Hampshire Ave., Silver Spring,

301-622-6596(TTY)

Potomac Library

10101 Glenolden Dr., 301-765-4083 (TTY)

Saturday, February 18:

Davis Library

6400 Democracy Blvd., Bethesda,

301-897-2203(TTY)

Poolesville Library

19633 Fisher Ave., 301-972-7825 (TTY)

Kensington Park Library

4201 Knowles Ave., 301-897-2250 (TTY)

For additional information, contact Dr. Gilberto Zelaya at
240-777-8532; or email

Gilberto.zelaya@montgomerycountymd.gov.

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February 25, 2012

The Honorable Nancy Navarro
Chair, Government Operations and Fiscal Policy
Montgomery County Council

Dear Ms. Navarro,

Attached, please find a copy of my recent letter to the Montgomery County Board of Elections.

The State Board of Elections is planning to implement a new absentee voting system in the November General Election. However, the SBE is describing the significant changes it is making as a "tweak" of the current (certified) absentee voting system. As a result, the Montgomery County BOE will be placed in the position of having to implement a system which has not been certified as a component of the Maryland Voting System (as required), and is not in compliance with Maryland Code (COMAR).

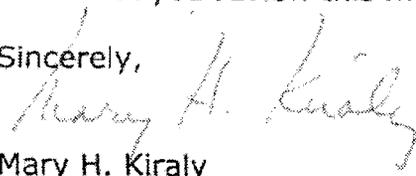
Background: The Federal Military and Overseas Voter Empowerment Act (MOVE) mandates the implementation of an absentee voting system for military and overseas voters that provides for timely receipt and return of absentee ballots (45 days). In 2010, because the Maryland Primary and General elections were so close together, the state could not meet the MOVE Act requirement for these voters using the certified absentee ballot system. So the state implemented a new online system for downloading ballots, which would then be printed, voted, and returned by USPS. (The Department of Defense office overseeing MOVE Act implementation encourages the use of online technology for these ballots.)

In 2010, the SBE took the further step of offering downloaded ballots to all Maryland voters. Since these ballots are printed on standard computer paper and marked, they do not meet the specifications for optical scanning for tabulation. All of the downloaded ballots had to be manually duplicated by bipartisan teams during the election canvass. It was a laborious process and Montgomery County, especially, was delayed in releasing election results.

Rather than return to limiting this technology to the military and overseas voters addressed by the MOVE Act mandate, the SBE has- instead- decided to introduce a number of new voting technologies to mark and encode ballots online, and to reproduce encoded ballots for optical scanning. It is an entirely new absentee voting system: a **parallel voting system**. It has not been approved by the Legislature. It will not be certified; and it will not meet Maryland Code concerning the printing and return of absentee ballots and envelopes. It will override existing regulations for the canvass.

I ask that you review this mandate for the County Board of Elections.

Sincerely,


Mary H. Kiraly

February 25, 2012

Ms. Mary Ann Keefe, President
Members of the Board
Montgomery County Board of Elections

Members of the Montgomery County Board of Elections,

I understand the difficulties and delays that reproducing downloaded ballots (introduced in 2010) present to the LBEs, and their Boards of Canvassers, during an election canvass. However, I am very concerned about the implementation of a **new parallel absentee voting system** to address these concerns. Senior SBE staff has been describing the significant new system components, being introduced in November, as "tweaks" to the current system. However, I believe that the attached diagram demonstrates that this is actually a new absentee voting system.

As such, this system must be certified to assure that it is secure, accurate, and compatible with the other components of the Maryland Voting System. It must protect the secrecy of the ballot. Moreover, any new voting system must conform to the requirements of Maryland Code (COMAR)- which this new absentee voting system does not.

It is important to note that both the encoded ballot and the duplicated ballot, in this new system, will be physically different from all other Maryland absentee ballots and will be handled differently until the point of scanning for tabulation.

I would especially call your attention to the **Ballot-on-Demand Printer**, which is a new technology being introduced to mark and print a duplicate ballot. The BoD Printer must be pre-programmed with all appropriate ballot styles. It must interpret the barcode on the original ballot to correctly mark a second ballot; and it must accurately print a ballot which can be optically scanned.

These processes: programming for ballot styles, marking of ballots, and printing of a ballot for optical scanning are hallmarks of the AutoMark system with required certification as a component of the ES&S Unity 3.2.1.0 voting system.

The Maryland Voting System, which has been certified, is comprised of (1) the AccuVote Touch Screen voting system for in-person voting and tabulation; and (2) an absentee voting system in which paper ballots are preprinted and those ballots are returned in preprinted envelopes which separate the oath from the ballot. Absentee ballots are optically scanned for tabulation.

The new absentee voting system lacks key components required by Maryland regulations (preprinted ballot, preprinted privacy envelope, separated oath).

For Montgomery County (and other LBEs), I believe that the most significant Election Codes, which they risk violating in using the new absentee voting system, are the following:

33.09.07.02

.02 Compliance Responsibility.

B. Local Boards.

- (1) A local board is **responsible for ensuring** every voting system and **every system component that it uses** has been **certified** by the State Board.
- (2) **Before** a local board buys or otherwise **accepts any change** to the hardware, firmware, or software of a certified voting system (including any improvement, upgrade, or patch), the local board shall verify with the State Board that the proposed change has been **certified or**, as authorized in COMAR 33.09.06, that certification has been **waived**.

33.11.05.03

.03 Ballot Rejection — Basic Grounds.

The local board **shall reject** an absentee ballot if:

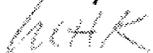
D. The **local board determines** that an absentee ballot is **intentionally marked** with an identifying mark that is clearly evident and placed on the ballot for the purposes of identifying the ballot;

The **barcode** on the downloaded ballot will be such an identifying mark.

Independent testing of voting system components, leading to **Certification** to EAC standards, has been a requirement of the Maryland Voting System since a consolidated statewide system was introduced in 2001. In 2004, the SBE withheld payments to Diebold because it had not fully tested the new voting system, jeopardizing the certification of that system. Also in 2004, a citizen lawsuit was filed alleging the failure of the SBE to certify the new voting system to Maryland Election Code requirements. That lawsuit is still pending.

Maryland must meet the requirements of the MOVE Act and provide for the timely receipt and return of ballots for military and overseas voters. The SBE has a grant from the Department of Defense to purchase federally-approved technologies to accomplish this. It cannot, however, extend these technologies to all Maryland voters without first complying with the requirements of Maryland Election Code. The Montgomery County Board of Elections, like all Local Boards, is authorized to ensure that this is the case, by that Code.

Sincerely



Mary H. Kiraly

cc: Montgomery County Inspector General, Montgomery County Council



Maryland State Board of Elections

SB 1078

Senator Dyson

Election Law - Absentee Ballots - Internet or Facsimile Transmission

Purpose

Senate Bill 1078 does three things:

1. The bill amends §9-306 to require a local board of elections to **mail** an absentee ballot to a voter unless the voter is one of the following.
 - a. Military or Overseas Voter – These voters may be sent an absentee ballot by Internet or by fax. This is already a requirement under the federal Military and Overseas Voter Empowerment (MOVE) Act.
 - b. Voter with Disabilities – These voters may be sent an absentee ballot by Internet, provided the voter acknowledges that the Internet delivery method is necessary to allow that voter to vote independently using a ballot marking tool.
2. 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).
3. 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.

Comments

The State Board of Elections supports this bill. 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.

SBE maintains that that even without a change in State law, the ballot marking tool would not require certification. Nonetheless, the clarification that certification is not required avoids any unnecessary confusion or possible legal challenge on such grounds. SBE wants to continue to move forward with the ballot marking tool because of the important benefits it provides.

1. It will make voting easier and more accurate for all voters by safeguarding against over-votes and warning against under-votes.
2. It will provide voters with disabilities the opportunity to independently vote their absentee ballots.
3. It will improve the speed and accuracy of canvassing ballots by putting a barcode on the ballot that represents the voter's selections. When an absentee ballot is sent electronically, the voter is required to print it out, vote it and return it to the local board office. The ballots cannot be read by the optical scan unit because the paper and print quality is of an insufficient quality for the optical scan unit to read it. Accordingly, those ballots have to be duplicated by the canvassing board onto a scannable ballot. Instead of hand duplicating the ballot, the barcode will be used to generate a duplicate ballot on scannable paper that the canvassing board can then verify and scan. The use of the barcode generated by the ballot marking tool will make the ballot duplication process more accurate and less susceptible to human error.

Finally, SBE received a \$650,000 grant from the Department of Defense Federal Voting Assistance Program (FVAP) that is being used for the development of the ballot marking tool. One of the FVAP's criteria for evaluating grants was how many critical components of the voting process were addressed in the proposal. SBE's proposal covered three critical components – registering to vote, requesting a ballot, and voting the ballot. There is no way of knowing whether the FVAP would have funded SBE if the proposal only addressed two critical components (registering and requesting) and whether they would permit us to keep some of the grant funds if we drop one of the critical components of the grant application. This legislation will ensure that SBE retains the grant funds and fulfils the obligations of the grant award.

Contacts:

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410-269-2877

LINDA H. LAMONE, ADMINISTRATOR
STATE BOARD OF ELECTIONS

EHEA 3/15/2012