

MINUTES

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2 The State Board of Elections (SBE) meeting was held on Monday, November 22,
3 2010, in the General Assembly Building, Conference Room D. In attendance
4 representing SBE were The Honorable Jean Cunningham, Chair; Harold Pyon, Vice-
5 Chair; Nancy Rodrigues, Secretary; Martha Brissette, Policy Division; Matthew Abell,
6 Elections Services Division; Justin Riemer, Special Advisor for Policy, and Joshua Lief
7 Senior Assistant Attorney General and SBE Counsel.

8 Ms. Cunningham called the meeting to order at 10:00 AM.

9 The first order of business was the introduction by Secretary Rodrigues of SBE's
10 new appointee, Justin Riemer, the Governor's Confidential Advisor for Policy.

11 The next order of business was the adoption of the agenda. Ms. Cunningham
12 called for a motion to adopt the agenda. Secretary Rodrigues asked to amend the agenda
13 by adding an executive session to the meeting to allow the Board to discuss pending
14 litigation with counsel. Ms. Cunningham advised those in attendance that the Board
15 will go into executive session at 11:00 am. Vice-Chairman Pyon moved to adopt the
16 agenda with amendments. The motion was seconded and unanimously approved.

17 The next order of business was a motion by Vice-Chairman Pyon to approve the
18 June 22, 2010, August 23, 2010 and the September 14, 2010 minutes. The motion was
19 seconded and unanimously approved.

20 The next order of business was the ascertainment of the November 2, 2010,
21 General Election.

22 On examination of official statements contained in its record books and verified
23 by the certified abstracts on file in its office of the votes cast in the General Election, the
24 Board certified the following persons have been elected Members of the House of
25 Representatives in the Congress of the United States for the Districts indicated below:

26	Robert J. Wittman	First District
27	E. Scott Rigell	Second District
28	Robert C. Scott	Third District
29	J. Randy Forbes	Fourth District
30	Robert Hurt	Fifth District
31	Robert W. Goodlatte	Sixth District

32	Eric I. Cantor	Seventh District
33	James P. Moran, Jr.	Eight District
34	H. Morgan Griffith	Ninth District
35	Frank R. Wolf	Tenth District
36	Gerald E. Connolly	Eleventh District

37 Ms. Cunningham asked for a five minute recess.

38 The meeting reconvened soon thereafter.

39 Following the break, Terri Ellen Carter asked that the Board not certify the
40 Montgomery County election results due to improper election procedures by the General
41 Registrar and Electoral Board.

42 The next order of business was the report on Absentee Voting Readiness
43 Compliance. SBE Policy Analyst Martha Brissette presented a report on absentee voting
44 readiness compliance for the November 2010 general election and distributed a summary
45 chart. She explained that overall, Virginia did a good job implementing the Military and
46 Overseas Empowerment (MOVE) Act. This was our first year with no voter harm due to
47 quick response and prudent legislation Virginia enacted in 2010 to protect voters whose
48 ballots are sent late. The State Board's training, new readiness certification, and quick
49 response to the few problems that did arise all contributed to successful implementation.

50 Three localities sent a total of 136 ballots late; these were ongoing ballots from
51 2008. By comparison, 16,079 ballots were issued on time on or before the September
52 18, 2010, readiness deadline. All late Virginia ballots were sent on or before October 1,
53 2010, less than 2 weeks late.

54 All voters whose ballots were sent late had an extension of 16 days, from
55 November 3, 2010, through November 18, 2010, to return their voted ballot or Federal
56 Absentee Write-In Ballot (FWAB). All but one locality reported its readiness to SBE on
57 time: Culpeper was one day late on its report but no ballots were sent late.

58 Of the 136 ballots sent late, fully 50 were actually returned by the last Thursday's
59 deadline, one after Election Day and timely under § 24.2-709. There were 66 ballots
60 cast and we do not know why they were not voted. Staff will keep working with the
61 election community to assure no delay stands in the way of military and overseas voting.
62 Federal Voting Assistance Program (FVAP) reports 838 Virginia FWABs were

63 downloaded from its website, another backstop we are working to improve. FVAP staff
64 has offered to assist with our training and we look forward to more improvement.

65 Ms. Cunningham asked for a motion to approve the form as edited. The motion
66 was seconded and unanimously approved.

67 The next order of business was a request for approval of Board Regulations.
68 Martha Brissette presented three proposed regulations for the Board's consideration: (1)
69 Material Omissions from Absentee Ballots; (2) Secure Data Transmission and (3)
70 Residency for Voter Registration. Ms. Brissette explained the Material Omissions for
71 Absentee Ballots reflected the hard work of Policy Analyst Peter Goldin and Deputy
72 Secretary James Alcorn in consultation with a group of General Registrars. After
73 reviewing comments, the Board approved the first regulation subject to preclearance to
74 replace Board Policy 2008-006, dealing with substantial compliance for absentee ballots.

75 Secretary Rodrigues moved to convene an Executive Session to discuss litigation:
76 "I move to convene a closed meeting for the purpose of consultation with legal counsel
77 regarding actual litigation involving the State Board of Elections, where such
78 consultation or briefing in open meeting would adversely affect the negotiating of
79 litigating posture of the State Board of Elections. Consultation with legal counsel
80 retained by the Attorney General to provide legal representation to the State Board of
81 Elections regarding specific legal matters requires discussions in a closed meeting to
82 receive legal advice and recommendation. The applicable exemption of § 2.2-3711[A][7]
83 of the Code of Virginia." The Board convened a closed meeting. At the closed meeting,
84 the Board was joined by Deputy Attorney General for Civil Litigation Wes Russell and
85 former SBE Counsel Jim Hopper.

86 At the conclusion of the closed meeting, Vice-Chairman Pyon moved to
87 reconvene in open session. The Board certified by unanimous vote that to the best of the
88 knowledge of each individual member of the State Board of Elections only the following
89 matters were discussed:

90 1. Matters regarding consultation with legal counsel regarding actual litigation,
91 where such consultation in open meeting would adversely affect the negotiating or
92 litigating posture of the State Board of Elections; and consultation with legal counsel
93 retained by the Attorney General to provide legal representation to the State Board of

94 Elections regarding specific legal matters requires discussions in a closed meeting to
95 receive legal advice and recommendation, and

96 2. Only public business matters lawfully exempted from open meeting
97 requirements under the provisions of the Virginia Freedom of Information Act.

98 3. Each member was asked to affirm acknowledgement of the certification and
99 each indicated that they individually affirmed acknowledgement of the certification.

100 Ms. Brissette explained the second proposed regulation on secure data
101 transmission sets forth the State Board's current practice with respect to transmitting
102 records containing sensitive personal information. Consistent with federal and state
103 statutory requirements and VITA security standards, the proposed regulation keeps
104 highly sensitive items, Social Security Numbers and full date of birth, safe from any
105 opportunity for disclosure, accidental or otherwise; these must be redacted or encryption
106 used.

107 Ms. Cunningham asked for a motion to approve the proposed regulation. Vice-
108 Chairman Pyon moved to approve the proposed regulations. The motion was seconded
109 and unanimously approved.

110 Ms. Brissette explained the proposed regulation on residency for voter registration
111 was a restatement of the previously approved and precleared State Board of Elections
112 Policy 2009-005 with the addition of a clarifying definition of address consistent with
113 2008 Attorney General guidance regarding the Board's voter list maintenance authority
114 under the National Voter Registration Act of 1993 (NVRA). She noted that Voter
115 Registration Coordinator Garry Ellis requested this clarification in response to General
116 Registrar concerns that § 24.2-418 does not clearly mandate the United States Post Office
117 as the exclusive provider of alternative mail boxes and the Code elsewhere permits other
118 commercial mail services (§ 24.2-707) consistent with general public policy favoring
119 competition. In response to a question from the Vice-Chair, Ms. Brissette explained the
120 clarifying definition added an objective reference—the United States Postal Service
121 Domestic Mail Manual—to define what mail box addresses may be used by voters
122 eligible to request suppression of residence address on voter lists.

123 Ms. Cunningham asked for a motion to approve the proposed regulation. The
124 motion was seconded and unanimously approved.

125 Ms. Brissette commented that York County General Registrar Walt Latham has
126 requested revising an approved template to reflect that registration deadlines can vary and
127 is shorter for special elections. The Board requested a draft for review before the next
128 meeting.

129 The next order of business was a request for approval of requests for inspection of
130 sealed election materials. Ms. Brissette requested the Board ratify the Secretary's
131 approval of requests to inspect sealed election materials arising out of the November
132 2010 general election. She explained that eight localities had made requests for various
133 issues: equipment (DRE, flash), accounting on pollbook check sheet and Statement of
134 Results, and envelope assembly. Each locality submitted the required forms providing
135 details reviewed by SBE staff before Secretary approval.

136 Ms. Cunningham asked for a motion to approve the request to inspect sealed
137 election materials in the following localities: Craig (4); Cumberland; Hanover; King and
138 Queen; Pittsylvania; Stafford (2); Washington; and Wise. The motion was seconded and
139 unanimously approved.

140 The next order of business was approval of Board Regulations regarding, Material
141 Omissions on Candidate Petitions and Referendum Petitions. Justin Riemer advised the
142 Board the proposed regulations will delineate between a material omission and an
143 immaterial omission on candidate or referendum petitions. Examples of material
144 omissions are as follows:

145 **CANDIDATE PETITIONS & REFERENDUM PETITIONS**

- 146 1. The petition submitted is not the double-sided, two page document, or a
147 copy of thereof, provided by the State Board of Elections.
- 148 2. The petition does not have the name, or some variation of the name, and
149 address of the candidate on the front of the form.
- 150 3. The circulator has not signed the petition affidavit and provided his
151 current address.

152 [The complete documents are on file at the State Board of Elections.]

153 Vice-Chairman Pyon moved to approve the proposed Board regulations
154 regarding, Material Omissions on Candidate Petitions. The motion was seconded and
155 unanimously approved.

156 Vice-Chairman Pyon moved to approve the proposed Board regulations
157 regarding, Material Omissions of Referendum Petitions. The motion was seconded and
158 unanimously approved.

159 The next order of business was public comments. Ms. Cunningham asked if there
160 were any public comments.

161 Ms. Terri Ellen Carter asked the Board why her earlier request was not relevant
162 and not acted on. Ms. Cunningham advised Ms. Carter that if she would approach the
163 Board after the adjournment of the meeting and reviewed the results of the election she
164 would get the explanation she requested. Ms. Carter stated that in her letter she explained
165 that Randy Wertz, General Registrar of Montgomery County, should be removed from
166 his position and the election officials should also be removed. When the electronic
167 pollbooks could not be opened in the affected precincts every voter should have voted a
168 provisional ballot. Ms. Carter stated that she held the Montgomery County Electoral
169 Board members responsible for the training of their election officials and they failed in
170 their duty by failing to provide understandable and up-to-date instructions to their
171 election officials. The General Registrar failed to have a workable backup plan. Due to
172 the upcoming redistricting and larger elections Ms. Carter again asked the Board to
173 remove the General Registrar and each of the Electoral Board Member. Ms Carter
174 submitted a copy of her statement of the Board, which is attached to these minutes.

175 Ms. Cunningham advised Ms. Carter that the Board is limited in its authority and
176 suggested that she contact her Senate and House of Representative members to request
177 that they empower the Board. In addition, she was also advised to contact her local
178 Commonwealth's Attorney. Ms. Cunningham stated that the Board would discuss this
179 issue at its next full scheduled meeting.

180 Mr. Edgardo Cortes, General Registrar of Fairfax County, requested that the
181 Board look into revising and simplifying the forms that the localities have to use. In
182 particular were the "What If" and "Statement of Results." These documents are too
183 cumbersome and confusing. Also, the instructions to use a #2 pencil on the ballots needs
184 to be changed and the Absentee Ballot Application should be reduced to one page.

185 Ms. Cunningham asked that Mr. Cortes submit his requests in writing to Secretary
186 Rodrigues.

187 Ms. Susan Lee, Manager of Election Uniformity, briefed the Board on the
188 creation of the Statement of Results. Two years ago a committee consisting of eight or
189 nine General Registrars, two or three Electoral Board members and four SBE staff
190 members met at the Richmond City warehouse to review the forms used by the localities.
191 During this review, there were significant changes made to the Statement of Results. The
192 committee noted that it was difficult to make changes to the forms without deleting
193 needed information. SBE continues to encourage and welcome suggestions on improving
194 any and all forms.

195 Ms. Margaret Luca, Fairfax County Electoral Board member, requested that the
196 process of handling DMV lookups regarding provisional ballots be improved. She also
197 suggested to enlarge the section requesting citizenship status on the DMV form.

198 Secretary Rodrigues informed Ms. Luca that DMV was in the process of
199 reviewing their process.

200 Cunningham asked for any further comments. There being none asked for a
201 motion to adjourn.

202 Secretary Rodrigues moved to adjourn the meeting. The motion was seconded
203 and unanimously approved. The meeting was adjourned at 12:45 PM.

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210 Chair

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214 Vice-Chairman

Secretary