

**NICOLE POORE**  
*Majority Whip*  
STATE SENATOR  
12<sup>th</sup> District



**SENATE**  
STATE OF DELAWARE  
411 LEGISLATIVE AVENUE  
DOVER, DELAWARE 19901

## Senate Elections & Government Affairs Minutes

Wednesday, June 5 2019

1:30 p.m.

Senate Majority Caucus Room, 2<sup>nd</sup> Floor  
Legislative Hall

### Committee Members Present:

Senator Nicole Poore, Chair  
Senator John Walsh, Vice Chair  
Senator David McBride  
Senator Catherine Cloutier  
Senator Bryant Richardson

### Attendees:

Senator Bryan Townsend  
Elaine Manlove, DE Elections Commissioner  
Mark Cutrona, Division of Research  
Matt Hartigan, Delaware Public Service Commission  
Drew Slater, Division of the Public Advocate  
Jill Helcowitz, League of Women Voters Delaware  
Sonia Augusthy, Department of Justice  
Jennifer Hill, Common Cause

### Agenda:

Review of minutes from the Committee meeting on May 15, 2019  
SB 96  
SB 121  
SS 1 for SB 14  
SB 98

**Senator Poore** convened the meeting at 1:35pm.

**Senator McBride** motioned to approve the minutes from May 15, 2019.

**Senator Walsh** seconded the motion, and the minutes were approved.

### **Senate Bill 96 - AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE STATE DEPARTMENT OF JUSTICE.**

Original Synopsis: In January of 2015, the Office of Civil Rights & Public Trust was created by the Attorney General to establish a centralized office within the Department of Justice for the investigation of matters concerning civil rights enforcement and the prosecution of matters concerning violations of the public trust. This office must remain an independent entity within the Department of Justice to avoid conflicts with other Department of Justice duties and thus effectively enforce laws protecting the public trust and civil rights. Thus, this Act creates the Division of Civil Rights and Public Trust within the Department of Justice which will be separate from the other Divisions within the

Senate, Legislative Hall, 411 Legislative Avenue, Dover, DE 19901  
Dover: (302) 744-4164 Wilmington: (302) 577-8744  
Email: [Nicole.Poore@delaware.gov](mailto:Nicole.Poore@delaware.gov)

Department of Justice and have a Director who reports directly to the Chief Deputy Attorney General, to avoid conflicts of interest with the work of the other Divisions. This Act also clarifies the current scope of the Department of Justice's ability to investigate and bring civil rights actions to protect the civil rights of all Delawareans.

**Senator Poore** summarized the legislation.

**Sonia Augusthy**, Deputy Attorney General with the DE Department of Justice, identified herself as the director of the Office of Civil Rights and Public Trust. She recounted that the office was formed in 2015 under Attorney General Matt Denn. She explained that the office took cases that posed conflicts of interest for other offices in the Department of Justice. She cited deadly use of force cases and allegations of criminal conduct against public employees as examples. She stated that the office had been involved with 21 deadly use of force cases, and 14 cases of alleged criminal conduct by public officials. She expressed their interest in making the office a permanent statutory authority.

**Senator Richardson** inquired about the outcomes of the investigations into deadly use of force cases.

**Sonia Augusthy** stated that there had been no prosecutions thus far, as all officers had been cleared.

**Senator McBride** asked about whether the additional position of director outlined in the legislation had been included in the budget.

**Jason R. Smith**, Senior Legislative Analyst with the Office of the Controller General, clarified that the specific position was not included in the budget, although other new positions were.

**Lauren Vella**, Policy & Legislative Director at Delaware Department of Justice, referred the committee to the fiscal note and stated that conversations were ongoing with the bill's sponsor, Senator McDowell.

**Jason R. Smith** pointed out that an existing Deputy Attorney General, Sonia Augusthy, already acted as Director of the office and would continue doing so. He stated that the bill sought to codify the current situation.

**Senator Richardson** requested information on the office's current staff.

**Sonia Augusthy** stated that they had two attorneys, three on-call investigators, one in-take person fielding calls, and a seasonal paralegal.

**Senator Richardson** asked if their caseload was increasing.

**Sonia Augusthy** responded that their cases accelerated each year, due to more cases being directed to their office.

**Senator Cloutier** requested to be added to the bill and expressed her belief that the office's work was very important.

SB 96 was circulated for signatures at 1:43 pm. It was released from committee with 5 on its merits.

### **Senate Bill 98 - AN ACT TO AMEND THE CHARTER OF THE CITY OF DELAWARE CITY RELATING TO THE POWER TO RAISE REVENUE.**

Original Synopsis: This Act amends the Municipal Charter of the City of Delaware City by allowing the Mayor and Council to impose a lodging tax of no more than 3%.

**Senator Poore** summarized the legislation, noting the frequency of such charter changes and expressing an interest in exploring one bill for to allow all municipalities to pursue a lodging tax.

**Mark Cutrona**, Deputy Director of the Division of Research, alerted the Senator to a bill sponsored by Representative Briggs King which would make the change for all municipalities in Delaware at once.

**Senator McBride** inquired about the constitutionality and rules compliance of such a bill.

**Mark Cutrona** briefly explained that he believed it was possible.

SB 98 was circulated for signatures at 1:46 pm. It was released from committee with 5 on its merits.

## **Senate Bill 121- AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.**

Original Synopsis: This Act makes necessary changes to Delaware's election laws based on the State's purchase of new voting devices and establishes auditing requirements for the voting devices. The new voting devices will function differently than the existing voting devices and so election law must be updated to conform the law. The new voting devices allow each voter to view a paper ballot with the voter's selections under glass for the voter to approve before pressing the final button to vote. This Act requires the Department of Elections ("Department") to audit the results of primary, general, and school board elections and establishes the procedure to be used by the Department. This Act also requires the Department to adopt regulations to govern the procedure to be used if an audit reveals a discrepancy. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

**Senator Poore** welcomed the bill's primary sponsor, Senator Townsend.

**Senator Townsend**, explained that the legislation would update election law to reflect the acquirement of new machines for the state of Delaware. He highlighted key provisions, including page 12, lines 336 and 337, which established the new voter verified paper ballot as the legal ballot. He also pointed out page 19 lines 541 and on, which confirmed that the devices must be certified by federal standards. He directed attention to page 21, lines 590 and on, which required inspections, software updates, and accuracy checks on machines before each primary or general election. He also cited page 22, line 638 which required auditing of the machines' counts.

**Senator Poore** asked for confirmation that the auditing referred to in the legislation was not related to the state's Auditor's office.

**Senator Townsend** confirmed that the auditing, or spot checks, were conducted by the Department of Elections. Senator Townsend also explained that they were contemplating an amendment to the section on auditing to change an "or" to an "and".

**Mark Cutrona** confirmed that this amendment was a possible necessity.

**Senator Townsend** also explained that the legislation was bipartisan and had been a product of the task force that worked on the purchase of the new machines.

**Senator Walsh** asked about the protocol for an audit discovering a problem.

**Senator Townsend** explained that the recount by hand would defer to the paper ballot as the legal ballot.

**Elaine Manlove**, DE Elections Commissioner, stated that DE's machines always included a paper record of the votes, but the new system allowed that paper ballot to be voter verified. She specified that the old machines did not allow the voter to see the paper record.

**Senator Walsh** inquired about other states that have adopted these machines.

**Commissioner Manlove** explained that no other state purchased election machines, as this was typically a county function. She cited parts of New Jersey and Pennsylvania, including Philadelphia, which had bought the same machines, some of whom had representatives watch DE's school board elections on the new machines before making the purchase.

**Senator Poore** thanked Commissioner Manlove for hard work and service to the Elections Department of Delaware.

**Senator McBride** also acknowledged Commissioner Manlove's achievements, noting her upcoming retirement and stating his interest in recognizing her service on the Senate floor.

**All Senators** expressed their gratitude and congratulations to Commissioner Manlove and the Commissioner received applause from all in attendance.

**Jill Helcowitz**, with the DE League of Women Voters, expressed her organization's support for the legislation. She emphasized the importance of random, routine audits to produce public confidence in election outcomes and prevent

tampering. She thanked the bill's sponsors and expressed interest in seeing statistics and data on the new machines and security practices once experience is gained.

**Jennifer Hill**, with Common Cause, submitted written testimony in support of the legislation which is enclosed at the end of the document. Ms. Hill also submitted a list of notes about the new voting systems, complaints compiled from the public's experience during the school board elections. This is also attached at the end of the document.

**Senator Richardson** expressed his support of the legislation and his belief in the importance of election integrity.

SB 121 was circulated for signatures at 1:58pm. It was released from committee with 5 favorable.

**Senate Substitute 1 for Senate Bill 14- AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE DIVISION OF THE PUBLIC ADVOCATE.**

Original Synopsis: This Act clarifies that the Public Advocate may appear before any federal or State court or federal or State administrative body in matters involving public utility rates, services, and practices of public utilities. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. This Senate Substitute No. 1 for Senate Bill No. 14 differs from Senate Bill No. 14 by allowing the Public Advocate to provide public comment before only State regulatory agencies and commissions and simplifying the language regarding the hiring of attorneys, as needed.

**Senator Poore** summarized the legislation.

**Drew Slater**, the Public Advocate, clarified that his office was not asking for money. He explained that the public advocate had no authority in code to hire attorneys or consultants outside of the Public Services Commission. He stated that this impeded their important work, especially on the PJM board.

**Senator Poore** inquired about the current situation.

**Drew Slater**, stated that the Public Services Commission could hire staff, although the public advocate occasionally needed to operate separately.

**Senator Richardson** thanked Mr. Slater and the Public Advocate's office for his assistance with the case of a constituent.

**Senator McBride** recalled when Senator McDowell worked to create the office. He stated that he had known many Public Advocates, and commended Mr. Slater in particular for his good work and achievements. He also noted that Mr. Slater and his staff member in attendance had both worked for the Senate previously.

**Senator Poore** and **Senator McBride** commended the former Senate staff and expressed their hope that the individuals learned from and were aided by their time working for the Senate.

**Matt Hartigan**, Deputy Director of the Public Services Commission, expressed his organization's support of the legislation.

SS 1 for SB 14 was circulated for signatures at 2:04 pm. It was released from committee with 5 on its merits.

**Senator Walsh** motioned to adjourn the meeting.

**Senator Richardson** seconded the motion.

**Senator Poore** adjourned the meeting at 2:04 pm.



**Delaware**

*Holding Power Accountable*

P.O. Box 342  
Newark, DE 19715  
302.293.8682

[www.commoncause.org](http://www.commoncause.org)

Dear Senator Poore and Senate Elections Committee,

June 5, 2019

Thank you for the holding this hearing on SB 121, Election Audit and other provisions of Title 15. Common Cause and other groups have been following and providing input into the selection and analysis of the new voting system. We support this legislation, and believe it is a step in the right direction by confirming that paper is the ballot of record. Prior to this Delaware had no law directing an audit or way to audit the system for over twenty years.

Why a manual audit is important. The new system is significantly different but still does not allow voters to manually review their votes. We still must depend on the electronic scanner and machine to both accept and total the votes. We hope that the manual audit of these votes will help us understand how the system is performing and verify the accuracy of our election results. Absentee ballots are currently reviewed by hand prior to being scanned, so that is consistent with how paper ballots are currently handled in Delaware.

We also are relieved the State will consider Risk Limiting Audits in the near future as they are the most statistically sound method of determining election accuracy. Rhode Island and Colorado have recently implemented RLAs.

One important reason for an audit was the experience of the first time use of the ES&S ExpressVote system in Delaware School Board Elections. In one of the school districts there were 114 undervotes. An audit of the devices and the results could have provided the information needed to determine what happened.

I've attached a copy of the anecdotal list of experiences with the system. Also, these are legitimate complaints or observations about Election Day. I myself was surprised at the variety of issues described by voters. I really expected the system to pretty much work 100% as promised, especially in an election where only 13,460 votes were cast statewide. That is a very small number compared to what a general election turnout of over 600,000 voters will look like. There is clearly work to be done between now and November 2020 to address any insufficiencies or errors.

We ask you to please vote in support of SB 121.

Sincerely,  
Jennifer A Hill  
Program Director and Lobbyist  
CCDE

## Notes on election system performance School Board Elections May 17, 2019

Here is a quick review of the first time use of the ES&S XL Voting system. Some of these issues were observed personally, others were communicated by members of the community.

Observed that the voting process was not a seamless transition. Voters had to be coached all the way through the steps including and not limited to election officials entering the booth to help voters finish voting. One voter described it as "bafflement", others noting it took more time to vote.

Undervotes were recorded. In one school district there were 114 undervotes. There was one undervote at my polling place. Each districts unofficial results are listed on the New Castle County Elections website.

On screen instructions both confusing and contradictory. After you make the choice there is a print message that states you can't change once a selection is made, the next message say's make sure this is your choice and if it is not push cancel. That is probably causing the undervotes.

Lack of secure perimeter - there was plenty of space all around the machines and a large number of poll workers with access.

One voter reported both voting machines were not working at her polling place at Mt. Pleasant High school in north Wilmington right around 4pm.

Voter complains that when she opened her ballot she did not recognize any of the names on the ballot, assumed it was the wrong slate.

Lag in reporting time in New Castle County. The polls close at 8pm and there were 4,120 votes but results were not posted until after 10:30pm. The aggregation time seems excessive, and we would like to know if there were any problems.

Printout text too small. Voters are not used to having to use reading glasses to vote, and it is a very small font.

Accessibility for disabled overstated. These are large heavy machines and set up for ambulatory folks, one voter with disabilities mentioned mobility issues could make it difficult to read the ballot, which is not at eye level and behind plexiglass. The online video on how to vote is not accessible, as it only has video with music and no actual voice instructions on how to vote step by step. This is really unacceptable.