

August 20, 2003

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

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Mark Wittstadt, Member
Susan Widerman, Member
Linda Lamone, Administrator
Tim Augustine, Deputy Administrator
Ross Goldstein, Director, Candidacy and Campaign Finance
Terry Holliday, Deputy Director, Candidacy and Campaign Finance

Division

Pam Woodside, Chief Information Officer, IT Division
Brad Barkey, Project Manager, Voter Registration System
Joe Torre, Voting Systems and Procurement
David Heller, Project Manager, Voting Systems
Donna Duncan, Director, Election Management Division
Mary Cramer Wagner, Deputy Director, Election Management Division
Joan Mobley, MARS Manager
Ernestine Blake-Green, Personnel Officer
Nikki Trella, HAVA Coordinator
Jan Hejl, Voter Registration Manager
Beth Buck, Budget Analyst
Judith Arnold, Assistant Attorney General

Also Present: Ed Chojnowski, President, Anne Arundel County Election Board
Armstead Jones, President, Baltimore City Election Board
Barbara Jackson, Election Director, Baltimore City Election Office
Sam McAfee, Voting Systems, Baltimore City
Linda Pierson, Baltimore City
Robert Antonetti, Election Director, Howard County Election Office
Nancy Dacek, President, Montgomery County Election Board
Sara Harris, Election Admin. Serv., Montgomery County Election Office
Kevin Karpinski, Attorney, Montgomery County Election Board
Charles Deegan, President, Prince George's County Election Board
Robin Downs, Election Director, Prince George's County Election Office
Michael Dresser, Baltimore Sun
Kibbe Turner, Election Judge, Anne Arundel County

Absent: Hilda Pemberton, Member

DECLARATION OF QUORUM PRESENT

After establishing the presence of a quorum, Chairman Burger called the meeting to order at 3:10 p.m.

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APPROVAL OF MINUTES OF MEETING OF JULY 14, 2003

On a motion by Ms. Beck, seconded by Ms. Widerman, the minutes of the July 14, 2003 meeting were approved as amended. Mr. Augustine explained that the Board was given a revised copy of the July 14th SBE meeting minutes. Mr. Wachter called the SBE office to ask that his comments made at the July meeting be included in the minutes. The revised minutes were unanimously approved.

WELCOME NEW BOARD MEMBER

Mr. Burger welcomed Ms. Widerman on behalf of the Board and staff as the newest member of the State Board.

Mr. Wittstadt stated that he is honored to be on Board. He thanked the Governor for appointing him. He added that he hopes the staff will keep them up to date on the important things.

ADDITIONS TO THE AGENDA

Mr. Armstead Jones, President, Baltimore City Board of Elections, requested that he be permitted to discuss a voting system issue under New Business.

ADMINISTRATOR'S REPORT

FYI Documents

Ms. Lamone advised the Board that several documents were included in their folders for later review.

Study of Diebold System

Ms. Lamone advised the Board that Science Applications International Corporation (SAIC), under an existing State computer security review contract, is conducting an analysis of the Diebold Voting System and the election procedures. Ms. Lamone added this will be a rigorous review of the voting system and will generate a detailed report, which is expected to be completed in early September. Ms. Lamone thanked the local election boards for their cooperation during the interview process. Ms. Lamone added that voting system implementation planning is still underway. One county has requested a waiver.

Diebold Demonstration

Mr. Heller and Mr. Torre, along with Tom Feehan, a Diebold technician, conducted a demonstration of the Diebold voting system for the Board members. The demonstration included a high level review of the acceptance testing, ballot definition and logic and accuracy testing. Following the demonstration, Mr. Burger expressed his

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hope that the demonstration was useful for all who participated. Mr. Burger also thanked those who conducted the demonstration.

Diebold Demonstration (Continued)

Ms. Beck asked if it is known what the state will be financially obligated for the new voting system. Ms. Lamone responded that the exact figures have been budgeted. A chart of the budget figures will be provided to the Board for review. Ms. Lamone added that funds have been budgeted for the length of the contract. The term of the contract will be effective through 2004 with options through 2008. Ms. Lamone went on to explain that all the funds from Help America Vote Act (HAVA) will not be dedicated to the voting system. A portion of the funds will be used for other mandates such as the voter registration system and voter outreach.

Voter Registration System

For the benefit of the new Board Members, Ms. Lamone and Ms. Trella provided a brief overview of the Help America Vote Act (HAVA). They explained the requirements for accessible voting equipment in each polling place and a statewide voter registration system. Ms. Lamone also advised the Board that the current voter registration project manager, Mr. Brad Barkey, has accepted a new position as Election Coordinator for Eagle County, Colorado. Mr. Barkey will be leaving at end of the month, but has accomplished a great deal during his tenure.

Specifically, Mr. Barkey headed up two voter registration workgroups in developing a requirements document for a HAVA compliant voter registration system that also meets the needs of Maryland election law and election officials. Mr. Barkey has also been diligently working with our current voter registration system vendor (ES&S) to make necessary HAVArelevant changes for our use until the new system is in place.

Ms. Trella also advised the Board on issues relating to voter ID under the provisions of HAVA. Any new registered voter must provide a full driver's license ID number or the last 4 digits of the social security number. This information will be matched against information at the MVA. Ms. Lamone added that this project is moving slowly since the MVA is having problems with technical issues. Ms. Trella added that a test will be run soon.

Voter Registration System Study

Ms. Lamone reported that the voter registration system requirements document has been shared with vendors who were interested as well as several other states. Other states are very appreciative. Mr. Burger added that this document represents functional requirements only.

Waiver Application

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Ms. Lamone advised the Board that a waiver application will be filed that would excuse Maryland from having to implement of the HAVA-mandated statewide voter registration system until after the 2004 elections. The waiver is to be submitted to the federal Election Assistance Commission; however, all the members have not yet been appointed. The Commission does not become operational until all members are seated. The federal funds will not be disbursed until the Commission is in place.

Waiver Application (Continued)

A bill has been introduced in Congress to help solve part of the problem. An amendment would allow GSA to be the agency to disburse HAVA funds to the states that have applied, so that they will not have to wait.

Baltimore City Election

The Board was advised that Baltimore City will conduct a Mayoral Primary election on September 9th. The deadline to register to vote prior to the primary election was August 19th.

Ms. Lamone advised that Prince George's County has offered to assist Baltimore City during the election.

Deceased Voters

The process to distribute information on deceased voters has been greatly improved. Ms. Lamone informed the Board that Ms. Hejl and Mr. Snyder have developed a method to compare the deceased persons file received from the Department of Health and Mental Hygiene, Vital Statistics Division, with the central voter registration database. This comparison allows a report to be produced that identifies the persons who have died in Maryland in the last month and who are registered to vote. The work of Ms. Hejl and Mr. Snyder allows the local board to process the death notices more efficiently.

Provisional Ballots

Ms. Lamone advised that HAVA also has specific mandates for the use of provisional ballots by voters who are not listed in the poll books on Election Day. While Maryland previously allowed for general use of provisional ballots, HAVA compliant procedures have been developed and have been sent to local boards for comment. A final version of the procedures will be sent to the Board for review.

Filing Deadline

A pre-election filing deadline for campaign finance reports was August 12th. It was noted that the SBE Help Desk received the least number of calls leading up to this filing deadline, which reflects fewer problems with software and increased familiarity with the system. However, it should be noted that, in lieu of filing the detailed report, campaigns

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not participating in the Baltimore City election could file an affidavit of non-participation.

ELECTrack Training

Mr. Goldstein and Ms. Holliday will conduct a training seminar in September. A training seminar was held at the SBE office in August. Mr. Goldstein advised that all campaign finance reports are now online in a searchable database. Mr. Burger stated that he has received positive feedback from those who have attended previous ELECTrack Training seminars.

Central Committee Meeting

The Republican State Central Committee has invited Ms. Holliday to a meeting on September 6, 2003 to instruct central committee treasurers on the use of the ELECTrack system.

Budget Preparation

Ms. Lamone reported that Ms. Buck is preparing information to complete the FY05 budget submission. Ms. Lamone also advised that as part of the budget process each agency must develop Managing for Results (MFR) goals and objectives. She advised that Ms. Buck and staff have been working on these.

MACo Conference

Ms. Lamone participated in a seminar panel discussion during the Maryland Association of Counties (MACo) Conference last week in Ocean City. The seminar was titled "Election changes afoot." Other members of the panel included Ms. Susan Campbell from Montgomery County and Mike Curtis of Accenture, with the County Administrator from Allegany as the moderator. The seminar was well-attended and included county commissioners, county council members, county administrators, members of the press and the Governor's office. Ms. Lamone provided a brief overview of the history of election reform and also provided a more detailed handout. Ms. Campbell's message included details on implementing the voting system, the need for specific resources and a strong encouragement for the county to work in partnership with the election offices. Mr. Curtis provided some comparison between the status of Maryland's HAVA compliance and that of other states. Mr. Curtis stated that since Maryland was the first state to have the required State Plan, a review of other states' plans often mirrored Maryland's plan.

Biennial Meeting

Ms. Lamone advised that the SBE staff is planning the agenda for the 2003 Biennial Meeting, which will be held in October 19, 20 and 21 at the Clarion Resort Fontainebleau in Ocean City. The local boards have been asked to submit suggestions on the topics they wish to discuss during the meeting.

Prince George's County Award

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Ms. Lamone announced that Prince George's County received an award from the Election Center for best practice in implementing a voting system.

ASSISTANT ATTORNEY GENERAL'S REPORT

Ms. Arnold advised the Board that she prepares a written outline of her activities since the last Board Meeting. The outline is prepared about a week in advance of the meeting so that it may be included in the pre-meeting mailing to the Board. She will provide updates to certain items during the meeting, but should the Board have questions about any other issues listed she would be happy to provide explanation.

Ms. Arnold reported that the *Maryland Green Party v. Maryland Board of Elections* case has been going on for nearly three years. Ms. Arnold explained that the Green Party challenged Maryland's ballot access laws for minor parties. The law requires candidates of a recognized minor party to petition for ballot access thus creating a two-step petition process for party recognition and putting party candidates on the ballot.

ASSISTANT ATTORNEY GENERAL'S REPORT (Continued)

A decision in favor of the Green Party was handed down by the Court of Appeals on July 29th, stating the two-step process is unconstitutional under the Maryland Constitution.

Ms. Arnold added that the Attorney General's Office recommends seeking reconsideration on "inactive" voter issue only, since the Court's opinion is inconsistent with NVRA and HAVA requirements. Another alternative would be to try to amend the Maryland Constitution. Ms. Arnold asked that the Board approve the filing of a motion for reconsideration, which must be filed by August 28th. The Board authorized Ms. Arnold to proceed with filing a motion of reconsideration before the August 28th deadline.

In the *Poole v. Lamone* case, a motion to dismiss was filed on May 9th. A conference with the presiding judge was held on August 12. Discovery is expected to be put on hold pending the results of the SAIC analysis of the Diebold voting system.

Ms. Arnold briefly explained the *Seipp v. Baltimore City Board of Elections* case, stating that the Circuit Court of Baltimore City held that a candidate who did not file a financial disclosure statement timely under the City charter should not appear on the ballot. The Court of Appeals reversed the decision on July 30th, ordering that the name be placed on the ballot. A court opinion will be issued later.

On behalf of the Attorney General, Ms. Arnold is considering a request for a waiver from certain Title 14 requirements by Potomac Electric Power Company/Delmarva Power and Light Company/Conectiv holding company. The case was filed under the wrong entity and Ms. Arnold wants them to file under the correct entity.

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Ms. Arnold received correspondence from e-Merges complaining of the use of voter registration information obtained by Aristotle. The State Prosecutor has in the past been unwilling to prosecute Aristotle regarding use of voter registration lists. E-merges now wants to do the same thing as Aristotle. Ms. Arnold explained to E-Merges that they are not allowed to use a registration list for other than election related matters and not profit commercially from its use.

REQUEST FOR WAIVER OF LATE FEES

Mr. Goldstein distributed instructions on the process used to handle waiver requests. The Board considered the following accounts:

Friends of Diana Fennell - On a motion by Mr. Wittstadt, seconded by Ms. Widerman, the Board accepted the Administrator's recommendation to grant the waiver request.

(Tony) McGuffin - On a motion by Ms. Widerman, seconded by Wittstadt, the Board accepted the Administrator's recommendation to grant the waiver request.

REQUEST FOR WAIVER OF LATE FEES (Continued)

Friends Of Lawrence D. Bland – On a motion by Ms. Widerman, seconded by Ms. Beck, the Board accepted the Administrator's recommendation to grant the waiver for the chairman only, holding the treasurer responsible.

Friends Of W. Louis Hennessy – On a motion by Mr. Wittstadt, seconded by Ms. Beck, the Board amended the Administrator's recommendation to grant the waiver on the condition that the report is filed within 30 days to 15 days.

People For Melvin L. Stokes – Mr. Goldstein explained the circumstances of this request after which the Board decided to defer until January on a motion by Mr. Burger, seconded by Ms. Widerman. The Board's recommendation on the resolution of this waiver request will be dependent upon whether the necessary reports are filed in a timely manner.

ADMINISTRATIVE CLOSURES

Ms. Holliday presented documentation for campaign finance entities that meet the requirements for administrative closure by the Board. The accounts were listed in two categories: those monitored by SBE and those monitored by the local boards. The Board discussed the accounts listed below with a recommendation from Ms. Holliday to approve all the administrative closure requests. On a motion by Ms. Beck, seconded by Ms. Widerman, the Board approved the administrative closure requests with a waiver of any late fees.

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SBE Accounts

Citizens for Anthony Cicoria
Elijah E. Cummings, Personal Treasurer Account
Friends of Tony Fulton
Maryland Dietetic Association PAC

Local Accounts

Dwight A. Pettit, Personal Treasurer Account
Murphy For Mayor Committee
Committee To Elect Anthony W. Robinson
Roy F. Carraher, Personal Treasurer Account
Our Neighborhood Team, Slate
Charles David Bagley
Nancy Blackwell-Whyte, Personal Treasurer Account
People to Elect Anthony Florence
Tyrone Johnson, Personal Treasurer Account
People For A Better Baltimore
Citizens For Better Government
N. Luqman "Wayne" Alfurquan
Robert S. "Bobby" Cunningham, Personal Treasurer Account

ADMINISTRATIVE CLOSURES (Continued)

Local Accounts (Continued)

Nathan C. Irby, Jr., Personal Treasurer Account
Naron William McCormick, Personal Treasurer Account
Vincent Phillip Fullard, Personal Treasurer Account
Sanford D. Horn, Personal Treasurer Account
Citizens For Quality In Government
Friends of Michael J. Moore
Friends of Albert Ceccone
Friends of Albert Ceccone, II
Marc Elich, Personal Treasurer Account
Citizens For Bob Sher
Herman Taylor For County Council
Citizens' Coalition for Waste Reduction & Responsible Solid Waste Financing
Andrew R. Humphrey, Personal Treasurer Account

BALTIMORE CITY VOTING MACHINE UPGRADE REQUEST

Mr. Jones explained that the Baltimore City Board sent a request to the State Board asking for permission to upgrade the AVC Advantage Voting Units with audio voting components that would provide unassisted voting for visually and/or physically impaired voters. During the ensuing discussion, Mr. Torre explained that the election

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law prohibits the State Board from certifying a voting system unless the State Board determines that an independent testing authority approved by NASED has examined the voting system.

Following the discussion, Mr. Burger requested an opinion of the Attorney General concerning the State Board's ability to approve Mr. Jones' request under existing law specifying that Maryland have a uniform voting system.

2004 DEPARTMENTAL LEGISLATION

MAEO has submitted two legislative proposals for submission as 2004 Departmental Legislation. Ms. Lamone explained that the first piece of legislation relates to the request for identification from first time voters at the polling place. Secondly, MAEO would like legislation introduced relating to the bulk mailing of absentee ballot applications.

Ms. Lamone explained that the 2003 legislation relating to identification faced a great number of difficulties and recommended that the 2004 legislation proposal to require IDs for everyone in the polling place be put on hold until at least after the March election. If extreme problems or complaints become apparent, then there would be evidence to take the proposal to the legislature. After considerable discussion, on a motion from Ms. Beck, seconded by Ms. Widerman, the Board moved to submit this issue as Departmental Legislation. Motion unanimous.

2004 DEPARTMENTAL LEGISLATION (Continued)

On a motion by Mr. Burger, seconded by Mr. Wittstadt, the Board agreed to delay the introduction of legislation relating to bulk mailing of absentee ballot applications until the Board has had time to review background information.

LOCAL BOARD COMPLIANCE AUDIT

Mr. Augustine gave a background report on the local board compliance audit for the purpose of the new Board members. Each member was given a copy of the final draft of 2002 compliance audit. Mr. Augustine asked that the Board members direct any comments or anomalies to him.

Mr. Burger stated that this is an important piece of work, an excellent project from which local boards receive communication from the State Board and the State Board receives reports of the unique practices from the local boards.

The board collectively commended the SBE staff for compiling this report. Mrs. Beck added that the audit is a beautiful research tool, well done.

OLD BUSINESS

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None

NEW BUSINESS

Prior to adjournment of the regular meeting, on a motion by Ms. Beck, seconded Ms. Widerman, the State Board went into Executive Session at approximately 6:25 p.m. to receive information about the voting system analysis being conducted by Science Applications International Corporation (SAIC) and to consult with staff, consultants, and legal counsel about pending or potential litigation. Mr. Burger noted that two board members were not present: Mr. Wittstadt and Ms. Pemberton. Motion unanimous.

SCHEDULING OF SEPTEMBER MEETING

The next meeting of the State Board will be held on September 3, 2003 at 2:00 p.m.

ADJOURNMENT

Following the Executive Session, at 7:35 p.m., the Board voted to adjourn the regular Board meeting there being no members of the public present to require reconvening in open session.