

APRIL 26, 2004

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman  
Joan Beck, Member  
Susan Widerman, Member  
Bobbie Mack, Member  
Rick Menikheim, Member  
Linda Lamone, Administrator  
Judy Arnold, Assistant Attorney General  
Mary Cramer Wagner, Deputy Director of Election Management  
Pam Woodside, Director of Information Technology  
Terry Harris, Deputy Director of Campaign Finance  
Joe Torre, Procurement Officer  
Beth Buck, Agency Budget Specialist  
John Clark, Voter Registration System Project Manager  
Nikki Trella, Election Reform Director (HAVA)  
Jaimie Jacobs, Election Reform Deputy Director  
Mary Dewar, Communications Director  
Mike Mattison, Voter Registration System Project Technical Support

Also Present: Edward W. Chojnowski, President, Anne Arundel Co. Bd. Of Elections  
Dorothy Kaetzel, Election Director, Washington County  
Kaye Robucci, Election Dep. Director, Washington County  
Patti Davis, Election Director, Talbot County  
Catherine Countiss, Election Director, St. Mary's County  
Judy Ritter, Election Director, Wicomico County  
Dorothy Duffield, Election Director, Charles County  
Florence L. Sutton, Election Director, Kent County  
Brenda R. Williams, Election Director, Queen Anne's County  
Sandra M. Logan, Election Director, Caroline County  
Patricia K. Matsko, Election Director, Carroll County  
Joanna Emely, Election Director, Somerset County  
Donna E. Rahe, Election Director, Dorchester County  
Sara Harris, Manager Election Admin. Services, Montgomery County  
Jim Harris, Montgomery County  
Molly Neal, Election Director, Harford County  
Katie Brown, Harford County Election Office  
Guy L. Harriman, President, Howard County Board of Elections  
Evelyn M. Purcell, Acting Election Director, Howard County  
Charles E. Poyer, Howard County Board of Elections  
Steve Hinz, Accenture  
Gil Genn, Diebold  
Henry C. Marshall

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**DECLARATION OF QUORUM PRESENT**

After establishing the presence of a quorum, Mr. Burger called the meeting to order at 1:31 p.m. Mr. Burger welcomed all present and introduced Mr. Rick Menikheim from Anne Arundel County and Ms. Bobbie Mack from Prince George's County as the two newest appointed members of the State Board of Elections.

**APPROVAL OF MINUTES OF MEETING OF FEBRUARY 23, 2004**

On a motion by Ms. Beck, seconded by Ms. Widerman, the minutes of the February 23, 2004 meeting were approved with amendments.

**APPROVAL OF MINUTES OF MEETING OF MARCH 22, 2004**

On a motion by Ms. Widerman, seconded by Ms. Beck, the minutes of the March 22, 2004 meeting were approved with amendments.

**ADDITIONS TO THE AGENDA**

Mr. Burger amended today's agenda to include MAEO's (Maryland Association of Election Officials) Proposed Salary Structure for Local Board Staffs.

**ADMINISTRATOR'S UPDATE**

NEW EMPLOYEES

Ms. Lamone introduced four new employees on the State Board of Elections staff. Ms. Janey Hegarty is the new Administrative Assistant for Security Technical Support. Mr. Mike Mattison is the new Voter Registration System Project Technical Support. Mr. Don Mueller is the new security technical support resource as required by the SAIC report. Mr. Harsch Patel is the new webmaster.

ADMINISTRATIVE COMPLAINT HEARING FOR JEFFREY LISS

The Liss hearing took place at the State Board of Elections on April 19, 2004. Ms. Nikki Trella was the designated hearing officer. Mr. Ross Goldstein has informed Ms. Lamone that a second complaint from a voter in Howard County has been filed.

Ms. Trella informed the Board that the hearing process went well, but that some fine-tuning of the procedures may be needed. Montgomery County had several witnesses. Mr. Jeffrey Liss, an attorney, testified on his own behalf. Both sides were issued an extension until Friday, April 30, 2004, to present further information. Regulations in place allow Ms. Trella until June 28, 2004, to release a final decision.

FOLLOW-UP TO LESSONS LEARNED WORKSHOP

On April 13, 2004, there was a follow-up to the first workshop held on March 16, 2004.

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## **ADMINISTRATOR'S UPDATE (continued)**

### FOLLOW-UP TO LESSONS LEARNED WORKSHOP (continued)

Ms. Lamone said that the second workshop had been well attended by SBE staff, Accenture personnel, and employees from all of the county election offices. The workshop was very interactive and focused on potential actions to address identified issues. There was much discussion during the breakout sessions. County employees were given the opportunity to suggest how the action plan items should be prioritized. Accenture compiled twenty-eight pages of minutes and other notes from the workshop and is working on a detailed work plan.

Accenture and the SBE security team are currently working on a full gap analysis of the RABA, SAIC, and Ohio reports and planning the best approach for the identified risks. A detailed work plan is being developed and the voting system steering committee will be used to gather input from the local boards.

Mr. Burger noted that a recent TIME magazine article quoted Fred Wertheimer, author of the RABA report, as saying that Maryland ignored security. Mr. Burger made it clear that such comments were based on misinformation, and he acknowledged the extraordinary amounts of time, effort, and money that the State and Local Boards of Elections have already invested in improving and assuring the security of the voting system.

### LEGISLATION

Ms. Mary Wagner reported that Senator Green's bill to raise the maximum age of children allowed into the polling place passed in the House and the Senate and is now waiting to be signed by the Governor.

### EXPANSION OF OFFICE SPACE

Mr. John Clark confirmed that there was no response on the office space to report.

### IT REPORT

Ms. Pam Woodside confirmed that the proactive maintenance team, headed by Mr. Kurt Snyder, was in the process of visiting each local election office to do necessary technical maintenance.

### DIEBOLD SITUATION IN CALIFORNIA

Ms. Lamone assured the Board that the situation between California and Diebold is unrelated to Maryland's voting system, but there is concern that media coverage will have a negative effect on voter confidence.

### LAWSUIT

The Campaign for Verifiable Voting has filed a lawsuit against the Maryland State Board of Elections in an attempt to have the Diebold voting system decertified before the November election. Ms. Judy Arnold, Assistant Attorney General, received the lawsuit

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**ADMINISTRATOR'S UPDATE (continued)**

LAWSUIT (continued)

last Thursday and is preparing SBE's response. The case was brought in the Circuit Court for Anne Arundel County.

PARALLEL TESTING

Ms. Lamone described the process of parallel testing of the voting system on election day, as previously conducted in California. The report from California was sent out last week.

VOTEHERE DEMONSTRATION

Ms. Lamone reported on a recent demonstration by VoteHere, a vendor with a possible solution to the "paper trail" issue. The product is not feasible for the November election. There is not enough time for VoteHere to work with Diebold on integrating its third-party software with Diebold's software, getting the combination certified, and having all the voting units ready for L&A (Logic and Accuracy). Additional products are being evaluated as they become available.

PROJECT MANAGER FOR THE VOTING SYSTEM AND THE PROGRAM  
MANAGEMENT OFFICE (PMO)

Ms. Lamone said that candidates are being identified for the position of Project Manager for the Voting System (David Heller's position). In addition, the RFP (Request for Proposal) for the Program Management Office was presented to potential bidders in a preproposal conference in the SBE conference area on April 23, 2004. Ms. Woodside explained to the Board that the PMO would help manage and support implementation of the Help America Vote Act (HAVA) requirements, excluding Voter Registration System implementation and support.

VANDALISM

There has been vandalism in the SBE parking lot. The police have been notified and the van is being kept at the State Police barracks during the night. Ms. Lamone expressed concern for staff members who work late and added that additional security measures have been taken.

ADDITIONAL IT REPORT ITEMS

Mr. Burger requested a copy of the draft RFP for the statewide Voter Registration System for review. Mr. Clark explained to Mr. Burger that the RFP could only be reviewed in the SBE office per procurement regulations.

BSC has executed a no-cost modification of its contract with SBE, to extend the contract through June 2004, so that BSC can complete the ISSP (Information Systems Security Plan).

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### **ADMINISTRATOR'S UPDATE (continued)**

#### VOTERSUNITE.ORG

Ms. Wagner briefed the Board members on VotersUnite, a paper trail advocacy group. The group planned mass delivery of an information package containing a paper trail document and a copy of Bev Harris' "Black Box Voting" book. Ms. Lamone received the package in advance with a "wake-up" letter and learned that Carroll County was on the list for delivery of the package. Ms. Lamone said that the document was full of misinformation. The staff notified the LBEs of possible delivery. Mr. Marty Cravatta is monitoring the group's website. Mr. Burger asked to be kept informed of significant activities having an impact on our plans and operations.

#### SECURITY

Mr. Burger noted that all twenty-three items of the system security action plan have been completed. Mr. Burger thanked the SBE staff involved in that endeavor.

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

#### POOLE CASE

There is a status meeting scheduled for April 28<sup>th</sup>. Representatives of the National Federation of the Blind (NFB) will attend the meeting to help identify the technical problems Mr. Poole is claiming to have experienced while participating in a demonstration of the voting system's audio ballot. The NFB has been unable to reproduce the technical situation Mr. Poole has described. It is not clear whether the case can now be settled.

#### GREEN PARTY

There was a scheduling conference before the Circuit Court in March. SBE has until May 11<sup>th</sup> to file affidavits explaining SBE's issues with the Court of Appeals' decision and SBE's voter registration list maintenance procedures. The LBEs will be providing support by describing their list maintenance issues. Ms. Arnold is working on those affidavits. After reviewing the affidavits, the court will decide on further proceedings.

#### LIBERTARIAN PARTY

The settlement agreement has been signed, the petitions for official party recognition have been reverified according to the agreement, and the case will be dismissed. The Libertarian Party must still submit additional signatures for official recognition in Maryland.

#### SUESSMAN CASE

The Suessman case focused on the issue of independent (unaffiliated) voters not being allowed to vote for circuit court judges in a primary election. SBE won this case in the Circuit Court for St. Mary's County. The Court of Appeals has denied Suessman's appeal seeking to invalidate the results of the primary election for circuit court judges. A written decision on the constitutionality of Maryland's judicial election system will be issued by the Court of Appeals at a later date.

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## **ASSISTANT ATTORNEY GENERAL'S REPORT (continued)**

### LYMAN CASE

The Lyman case is similar to the Suessman case, but in the Circuit Court for Anne Arundel County. The case is stayed for six months or until the Court of Appeals reaches a decision in the Suessman case.

### PAPER TRAIL LAWSUIT

As mentioned in the Administrator's Update, SBE recently received a sixty-page lawsuit plus its many attachments from a group of paper trail advocates. There are no critical dates as of yet, but the filers wish to have the case heard quickly since they want the voting system to be decertified before the November election. The case is in the Circuit Court for Anne Arundel County. A judge has not yet been assigned.

### LISS HEARING

Ms. Arnold sat in as an advisor for the Jeffrey Liss administrative complaint hearing. Mr. Burger asked if there was a way to address repeated complaints for identical situations if the staff became overburdened. Ms. Arnold responded that the hearing officer has the discretion under Maryland's regulations to limit testimony, but must hold a hearing if one is requested. Multiple complaints could be consolidated, but we must offer adequate due process. Ms. Widerman asked if the decisions of prior cases could be brought up during cases identical in nature. Ms. Trella replied that prior decisions would help to streamline some parts of the process.

### CONSTITUTION PARTY

The Constitution Party is now recognized as an official political party in Maryland.

## **DEPARTMENT OF LEGISLATIVE SERVICES AUDIT REPORT**

Mr. Burger asked Ms. Lamone to update the Board on the audit report. Mr. Burger also requested that Board members be provided with copies of the audit report and SBE's response to the findings.

Ms. Lamone reported on the five findings from the audit completed one year ago:

- 1) The audit reported issues with the oversight of the LBEs. The auditor recommended that SBE have a formalized process for auditing all LBEs. The Board had approved the initial audit questionnaire used and had been given a summary report. Ms. Lamone noted that the staff does not have the resources to do the auditor's recommended monthly visits to each and every LBE, but that current departmental procedures are sufficient for gathering information.
- 2) The audit reported that SBE's internal networks were not adequately secure from

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**DEPARTMENT OF LEGISLATIVE SERVICES AUDIT REPORT (continued)**

- external threats. Ms. Lamone reported that the recommended additional firewall has been installed between SBE, DBM, and Archives. Verizon is still working on some intranet issues.
- 3) The audit reported some issues with controls over the processing of non-cash adjustments for accounts receivable. Ms. Lamone reported that the issues have been resolved by removing Ms. Beth Buck from direct activity with accounts payable and accounts receivable. Ms. Buck now verifies all related information. Ms. Buck reported that the billing address issue has also been resolved.
  - 4) The audit reported issues with the voting system inventory. The problems were based on inconsistencies between how DBM and Ms. Robyn Terry entered information. Ms. Pam Woodside reported that Ms. Terry can only enter information as cumulative, while DBM can enter detailed information. Ms. Buck added that items entered could not be removed. Ms. Lamone noted that the conflict was between FMIS (Financial Management Information System) and SBE. Ms. Woodside confirmed that each county has an accountable officer for inventory at the county level. Ms. Lamone stated that there would be an RFP for a computerized inventory system to improve the process.
  - 5) The audit reported issues with how duties were shared over the payroll processes. Ms. Lamone reported that these issues had been resolved.

**HELP AMERICA VOTE ACT (HAVA) FUNDS ALLOCATION PLAN**

Mr. Burger asked the staff to provide a detailed update on Maryland's share of HAVA funds and SBE's plans for spending the available funds. Ms. Lamone informed the Board that the State Plan, which was submitted to the Federal Election Commission, has been published in the Federal Register for final adoption. Allocation of the grant money has been delayed until mid-May, due to the delayed organization of the Election Assistance Commission. Ms. Nikki Trella drew the Board members' attention to charts in their folders providing a breakdown of requirements payments, a three-year budget plan, a breakdown of the disability grant that Maryland received for FY03, and the amount of the expected disability grant for FY04. Ms. Trella explained that Maryland would be receiving more HAVA funds than the State HAVA Plan assumed. Ms. Jaimie Jacobs is currently working on the grant application for the FY04 money. Ms. Trella clarified that the HAVA funds for Title 101 and Title 102 were received as one-time lump sums; the funds for subsection 251 would be allocated over three years; and the grant to improve accessibility for voters with disabilities was from a separate source.

Ms. Mack asked for more details on the grant to improve accessibility of the polls. Ms. Lamone explained that the State would purchase the items to be distributed to the counties,

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**HELP AMERICA VOTE ACT (HAVA) FUNDS ALLOCATION PLAN (continued)**

with federal auditing procedures. Ms. Jacobs explained that she was currently contacting the counties for more details about their requested items for temporary accessibility solutions at the polling places. This detailed information will be compiled and then passed to Mr. Joe Torre for the procurement process. Mr. Burger requested a copy of the compilation report when it is completed.

**BALTIMORE CITY POLLING PLACES**

Mr. Burger provided a brief summary of the situation in Baltimore City involving Mr. Joe Collins, Jr., which was brought to the State Board's attention at the March meeting. Mr. Collins claimed that a significant number of precincts opened at 10:00 a.m., thus harming his city council primary candidacy. Mr. Collins further claimed that the Baltimore City Board of Elections ignored his pursuit of this matter. At Mr. Burger's request, he received a quick and thorough response from Ms. Barbara Jackson, Election Director of Baltimore City. Mr. Burger also had a positive phone call from Mr. Armstead Jones, Sr., President of Baltimore City's Board of Elections, who investigated these claims as soon as Mr. Collins brought them to his attention.

In summary, Baltimore City had already conducted an investigation of Mr. Collins' claims and found that only one precinct opened excessively late on the day of Baltimore City's September 2003 primary. In addition, Baltimore City had identified precincts that opened moderately late and targeted them as "hot sites" for acute attention on the day of the Primary Election in March. Mr. Burger was confident that the Baltimore City Board of Elections had acted properly in responding to Mr. Collins' complaint and addressing the issues.

In response to a question from Ms. Beck, Mr. Burger agreed that Mr. Collins was owed a response to his letter sent to the State Board. Mr. Burger asked Ms. Lamone to draft a response.

**MAEO REQUEST FOR SBE LETTER TO COUNTIES TO FUND LBE IT POSITION**

Ms. Pat Matsko, speaking on behalf of MAEO, informed the Board that, regardless of the size of the county election office, there is a need for a full-time IT person on each staff. MAEO would appreciate a State Board letter to the local governments to strongly encourage their funding of an IT position. Mr. Burger agreed to the request, but asked for MAEO to supply some proposed language for the letter. Ms. Beck was very supportive of MAEO's request and said that the local boards' IT needs were understood. Mr. Burger agreed that a full-time dedicated IT position is essential, not just for the voting system, but also for the voter registration system, the intranet, and email services. Ms. Lamone stated that a job description has already been prepared and classified by the Maryland Department

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**MAEO REQUEST FOR SBE LETTER TO COUNTIES TO FUND LBE IT POSITION (continued)**

of Human Resources.

On a motion made by Ms. Beck, seconded by Mr. Menikheim, the State Board members voted unanimously in favor of writing a letter to the twenty-four local governments strongly encouraging the creation of a full-time IT position at the county election office. Ms. Matsko will provide the language for the letter.

**MAEO'S PROPOSED SALARY STRUCTURE FOR LOCAL BOARD STAFFS**

Ms. Lamone informed the Board that county election employees are included in the state merit system, with the exception of those in four counties (Allegany, Prince George's, Montgomery, and Calvert). Ms. Lamone reported that legislation was passed during the 2000 General Assembly to transfer salary-setting authority from DBM to the State Board. MAEO has presented a proposal for a new salary structure that Ms. Lamone is now presenting to the State Board for adoption. The proposal includes a comparison of current salaries, the proposed salaries, and the salaries of other county agencies.

Mr. Burger recognized the hard work of the county employees and agreed that salary increases were in order. Ms. Beck agreed with Mr. Burger and noted that the dynamics of the county election office were as complex as any other county government office.

Mr. Guy Harriman, President of the Howard County Board of Elections, voiced concern about the proposed salary structure's starting salaries, the salaries of comparable positions in other Howard County agencies, and Howard County's need to hire a new election director.

Mr. Burger deferred any decision until the Board members met in closed session for further discussion.

**SBE MEMBERSHIP IN MAEO**

Ms. Lamone explained to the Board that representatives of the State Board of Elections who join MAEO are non-voting members. For the benefit of the new Board members, Mr. Burger added that while SBE members and staff can still become associate members of MAEO, the State Board of Elections had been removed from MAEO's masthead at the State Board's request due to potential policy conflicts between SBE and MAEO. The Board members were all in agreement that there be continued SBE membership in MAEO. All of the Board members indicated to Mr. Burger that they would like to sign up for membership for this year. Mr. Burger left SBE staff membership to Ms. Lamone's discretion.

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## **WAIVERS**

Ms. Terry Harris informed the Board that future waiver requests would be scanned and sent out as email attachments. New Board members were informed that about thirty to forty waiver requests are received each month; however, the Board members only see the waiver requests that the State Administrator has recommended for approval.

Ms. Beck noted that several of the waiver requests indicated software problems. Ms. Harris informed the Board that some of the cases had legitimate issues related to installation of the software. Mr. Burger has heard repeated positive feedback about the Candidacy and Campaign Finance staff and commended them for the support they have provided to account holders.

### (#1) FRIENDS OF OLATUNDE BABAYALE

Mr. Burger requested that another letter be sent to the account holders advising them to appoint a treasurer. Ms. Beck moved that the Board accept the Administrator's recommendation to grant the waiver request. Ms. Widerman seconded the motion. The motion was unanimously approved.

### (#2) FRIENDS OF WALLY CARSON, (#3) COMMITTEE TO ELECT ALISA CHAPMAN, (#4) FRIENDS OF ULYSSES CURRIE

Ms. Widerman moved that the Board accept the Administrator's recommendation to grant the waiver requests. Mr. Menikheim seconded the motion. The motion was unanimously approved.

### (#5) TOM HENDERSHOT CAMPAIGN COMMITTEE

Ms. Beck moved that the Board accept the Administrator's recommendation to grant the waiver request with the caveat that the account holders pay the overdue fees in thirty days. Mr. Menikheim seconded the motion. The motion was unanimously approved.

### (#6) FRIENDS OF DATON A. LYNCH

The Board's decision was deferred until more information was provided.

### (#7) FRIENDS OF SENATOR NORMAN STONE

Ms. Widerman moved to grant the waiver request. Mr. Menikheim seconded the motion. All Board members voted in favor of granting the waiver request.

### (#8) MARYLAND MOTORCYCLE RIDERS PAC, (#9) POLISH AMERICAN POLITICAL ACTION COMMITTEE OF MARYLAND, (#10) MARYLAND TAXICAB, SEDAN AND PARA TRANSIT ASSOCIATION PAC

Ms. Widerman moved to accept the Administrator's recommendations to grant the waiver requests. Mr. Menikheim seconded the motion. All Board members voted in favor of granting the waiver request.

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### **WAIVERS (continued)**

#### **(#12) BETTER COMMUNITIES COMMITTEE SLATE**

Mr. Menikheim moved to grant the waiver request. Ms. Beck seconded the motion. All Board members voted in favor of granting the waiver request.

### **OLD BUSINESS**

Ms. Widerman asked Ms. Trella about the three counties that had not turned in their revisions of the judge's manuals. Ms. Trella reported that one of the three counties had turned in revisions since the February meeting. Mr. Burger requested Ms. Trella to provide an update at the next Board meeting.

Ms. Widerman reiterated the importance of having State Board guidelines on provisional ballots and thorough judges' training for the November election. Ms. Widerman was concerned about reported incidents of properly registered voters demanding to vote by provisional ballot in lieu of using the DRE voting unit. Mr. Burger noted the possibility of voters becoming angry if they are denied provisional ballots. Ms. Trella stated that the judge's manual did not address this specific situation, but that guidelines had been issued along with other last minute instructions. Ms. Widerman said that properly registered voters who insist on voting by provisional ballot in lieu of the DRE voting unit must be clearly told that their provisional ballots will not be accepted if they do not meet any of the authorized reasons. Mr. Burger agreed. In response to a question from Ms. Widerman, Ms. Trella said that printing a disclaimer on the provisional ballot application was not necessary because these voters should not be given an application. Ms. Beck asked if the degree of the problem would be lessened if the disclaimer was posted on the walls of the polling places. Ms. Trella informed the Board that provisional ballot information was already posted according to HAVA guidelines. Ms. Widerman said she was comfortable not having a disclaimer printed on the application if relevant information is already posted. Mr. Burger stated that the provisional ballot issue would remain open for later discussion.

### **NEW BUSINESS**

Ms. Lamone reminded the Board that the MAEO conference was scheduled for June 6-9, 2004. Ms. Wagner supplied information received from MAEO.

### **SCHEDULING OF MAY MEETING**

The next meeting of the State Board will be held on Thursday, May 27, 2004, at 1:30 p.m.

### **CLOSED SESSION**

Ms. Beck moved that the Board meet in a closed session. Ms. Mack seconded the motion. The Board voted unanimously to hold a closed session to discuss the compensation of

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**CLOSED SESSION (continued)**

officials and employees over whom it has jurisdiction and to consult with staff and counsel about potential litigation. A closed session is permitted under State Government Article, section 10-508(a)(1), (7), and (8).

The open session ended at 4:11 p.m., to be resumed after the closed session. Mr. Burger welcomed those in attendance to remain for the conclusion of the open session to be held after the closed session.

**CONCLUSION OF OPEN SESSION**

The Board briefly resumed its open session after the closed session.

Ms. Beck moved that the Board adopt MAEO's recommendations for the proposed salary structure. Mr. Menikheim seconded the motion. The Board voted unanimously in favor of adopting the proposed salary structure, which will go into effect on June 1, 2004.

**ADJOURNMENT**

On a motion by Ms. Mack, seconded by Mr. Menikheim, the meeting adjourned at 6:00 p.m.

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Gilles W. Burger, Chairman