

March 22, 2005

State Board Meeting
151 West Street, Suite 200, Annapolis, MD 21401-0486

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Frank Boston, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Judith Arnold, Assistant Attorney General
Donna Duncan, Director of Elections Management
Nikki Trella, Election Reform Director
Mary Cramer Wagner, Director of Voter Registration
Pam Woodside, Director of Information Technology
Joe Torre, Procurement Officer
Jessica Jordan, Agency Budget Specialist
John Clark, Voter Registration System Project Manager
Patrick Stauch, Voting System Project Manager
Jaimie Jacobs, Election Reform Deputy Director
Natasha Walker, Election Management Assistant

Also Present Guy Harriman, Howard County
Betty Nordass, Howard County
Gail Carter, Carroll County
Patricia Matsko, Carroll County
Darlene Anderson, Baltimore County
Jackie McDaniels, Baltimore County
Dave Laning, Baltimore County
Rebecca Wilson, Prince George's County
Tom Feehan, DESI
Kevin Kapinski, Montgomery County.

DECLARATION OF QUORUM PRESENT

Mr. Burger welcomed those in attendance and opened the meeting at 1:37pm with a quorum present.

APPROVAL OF MINUTES OF MEETING OF FEBRUARY 14, 2005

On a motion by Ms. Beck, seconded by Mr. Boston, the minutes of the February 14, 2005 meeting were approved.

ADMINISTRATOR'S REPORT

Introduction

Ms. Lamone began her report by introducing Pat O'Hara, the EDS Project Manager for the Program Management Office contract. Mr. O'Hara began work on March 16th. EDS will be providing project management services for the voting system implementation in Baltimore City and

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maintenance of the voting system for the remaining 23 counties, assistance with the development of a statewide election judge curriculum, and other HAVA-related activities

Judges – Confidentiality of Personal Information

In the wake of highly publicized murders of judges, staff has received phone calls from two circuit court judges requesting that their personal information displayed on our website (as part of a historical candidate list) be removed. Ms. Lamone noted that staff is in the process of removing this information (i.e. street address and phone number) from the website. In addition, a letter was sent to Chief Judge Bell requesting his assistance in informing judges that personal information collected on *Certificates of Candidacy* and *Voter Registration Applications* are publicly available and judges should fill out and submit the *Confidentiality Request Form* if the judges want to ensure that this information is not released to the public.

Mr. Burger stated that any confidentiality requests received to date are granted and that he would serve as the board's proxy for any future confidentiality requests. The Board members agreed with this arrangement.

Local Board Issues

-Talbot County

Ms. Lamone stated that staff met with a representative from the Department of General Services to help determine the minimum space requirements for the Talbot County Election office and warehouse. Based on the requirements of the Facilities Program Manual, staff is recommending that the 1,260 Sq. Ft. of office space and 2,736 Sq. Ft. of warehouse space. This is more than double the space currently occupied by the Talbot County Election Board. Mr. Goldstein asked the Board to formally approve the minimum space requirements developed by the staff. Mr. Boston moved to accept the recommendation. Ms. Beck seconded the motion and the board unanimously approved the recommendation.

-Allegany County

Allegany County Board sent a memorandum (copy provided in your folders) expressing their concern with the provisional ballot canvassing policy established in the guidelines. Specifically, they request that ballots cast by non-county voters be transferred to the county where the voter resides (currently the ballots are counted in the county in which they are received). The Allegany County Board is concerned that the current mode of operation could result in a misinterpretation of the statement of votes cast. Allegany County has also extended an invitation to the Board to come to Allegany County to discuss the matter in person.

Ross Goldstein has prepared a draft letter for Board approval. The letter states that a MAEO workgroup will be convened to review the Provisional Voting Guidelines and that the issue will be addressed. Regarding the visit invitation, Mr. Burger requested the staff to include in the letter a thank you to the County for the invitation but that the Board would like to take the local board up on the offer sometime in the future.

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Personnel

-Recruitments

Hiring freeze exemptions have been received for the following positions:

- a. Director of Candidacy and Campaign Finance
- b. Chief Information Security Specialist Officer (Contractual)
- c. Office Secretary (Campaign Finance Division)
- d. Assistant Project Manager (Voter Registration Division)

Staff is currently beginning the recruitment process for these positions. Most are still in the advertising stage.

-Management

Staff has been researching and is preparing to purchase (approximate cost is \$5,000) a fully automated time management system. This system will:

- a. Allow employees of the State and local election offices to submit their bi-weekly timesheets and leave requests electronically;
- b. Allow supervisors to review and approve timesheets electronically;
- c. Automatically calculate available leave; and
- d. Greatly streamline the process for preparing the payroll report for the Department of Budget and Management.

Budget

-Legislative Budget Process

The legislature has finished the budget process. House adopted and Senate adopted SBE budget. SBE made out very well with a cut of \$24,000 from contractual services out of an overall budget of \$20.5 million.

-HAVA - State Plan

Under the Help America Vote Act (HAVA), SBE was required to produce a State Plan to comply with the 13 mandates of the federal law. As part of the plan, a budget was created that allocated how the federal funds were to be spent. However, when the plan was created, we did not know how much federal money we were going to get or the cost of the various projects. Now that we have this information we need to reassess and amend the State Plan.

A committee of stakeholders [9 members comprised of three local Board Election Directors, the National Federation of the Blind, League of Women Voters, MACO, another disability advocate, and a member of the public] developed the State Plan initially and they will be reconvened to help us work on amending the plan. The amended plan will be submitted to the Election Assistance Commission for a publication and comment period. We also have to publish it here in Maryland.

Ms. Lamone also noted that SBE must report to the EAC at the end of the month on the Requirements funding. Members should receive a copy in the next week before it is sent out.

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-MBE Report

Ms. Lamone reported that staff has filed the 2004 MBE report with the Governor's Office on Minority Affairs. Ms. Lamone noted that the subcontracted MBE levels remain high. Mr. Burger requested a summary of the report.

E-Poll Books

-Salisbury Election

Nikki Trella and Jaimie Jacobs served as election judges in the City of Salisbury's Primary Election on March 1st. Salisbury opted to use Diebold's ExpressPOLL, its version of an electronic poll book, in lieu of precinct registers. Although the turnout was extremely low (6% citywide), the potential to reduce lines by using an electronic poll book was obvious. The judge using the electronic poll book consistently located the voter in the poll book much more quickly than the judge retrieving the Voter Authority Card. The City plans on using the electronic poll book for the General Election and will be eliminating the alphabetical breakdowns.

-Demonstration

A demonstration of an electronic poll book by Ferey, Inc. was held on March 7, 2005. The product is a hand held unit that integrates the following components: card encoder; barcode reader; magnetic scanner; poll book capable of storing the entire voter registration database; signature pad; and printer. The product was very favorably received by the electronic poll book group. The estimated price per unit is \$1,300. The software is sold separately, and would be a one-time development cost that would depend on the features we seek to utilize (between \$30,000 to \$150,000 for the entire system –not per unit). Mr. Burger noted his interest in seeing the Ferey system.

Election Directors' Meeting

An Election Directors' meeting has been scheduled for Tuesday, March 29, 2005, at 9:30 a.m. At this meeting, Marcia Lausen, Program Director for Design for Democracy (a program of the American Institute of Graphic Artists), will be presenting the benefits of using graphic art design in election materials and instructions. We anticipate using the services of a graphic artist in redesigning the judges' manual for the 2006 election cycle. Ms. Lamone said that Ms. Lausen's presentation shows the before and after of documents and that it is amazing. Mr. Burger has high hopes with this. He would like to see some kind of sample of what they are offering or their style.

Contracts

The Board of Public Works approved the EDS contract on March 2, 2005.

HAVA

-Disability Grant Reports

A draft of the narrative report for the FY 03 and FY 04 grants to assure access for individuals with disabilities was previously distributed to the Board for review. The report is due to the U.S. Department of Health and Human Services by March 31st. The financial report for FY 03 and FY 04 for the Title III requirements payments is due to the Election Assistance Commission on March 30th. A draft of the report will be forthcoming. Mr. Burger noted that he had reviewed the draft report and

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was fine with it. After asking whether his colleagues had any comments, Mr. Burger stated that the report could be finalized and sent.

-EAC Voter Registration Survey

A draft copy of the EAC Voter Registration Survey was provided with the meeting materials. Ms. Wagner noted that the document that the EAC sent had a glitch in it - we were able to enter the information but when we went to print it, it would not print out. The EAC resent the document and staff is currently working on completing it. The survey is due to the EAC by March 31, 2005.

-Administrative Complaint

An administrative complaint from a Baltimore City voter was received, but was not timely. Staff has sent notice to the voter informing her of this fact.

Municipal Elections

-Diebold

The Municipal Document (which contains the guidelines for municipalities who wish to use State owned equipment for their elections) has been updated with security procedures and is in final review. It will be published to the local boards in the near future.

-Meeting with Maryland Municipal League

Ms. Lamone reported that Nikki Trella, Ross Goldstein, and she met with representatives from the Maryland Municipal League to discuss the possibility of working with municipalities to pilot different voting system technologies (verification components and e-poll books) during their elections this year. The meeting was very productive and helped lay a foundation for future collaboration.

Conference with National Federation of the Blind

Pam Woodside and Joseph Torre attended and spoke at a Conference held by the National Federation of the Blind. They discussed various voting issues and the work the State has done to ensure that voting is accessible to the disability community. Five states were represented there. The presentation was very well received.

Jaimie Jacobs was also there to attend workshops on accessibility issues. Ms. Lamone noted the good SBE representation at the NFB conference and that we continue to work very collaboratively with them.

Meeting with Jury Commissioners

The jury commissioners from around the State will be meeting in Howard County on March 24th to discuss a variety of issues. Ms. Lamone stated that she had asked to attend the meeting in order to inform them about the changes in voter registration due to the new uniform Voter Registration System being developed. The Jury Commissioners obtain their jury lists from the Voter Registration System and the MVA. Ms. Beck asked whether we have worked out anything with the MVA on our problems. Ms. Wagner stated that we are currently sending out to the locals a list that identifies people who say they wanted to register to vote at the MVA, but are not showing up as registered

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voters. Ms. Wagner stated that she is receiving data back from the LBEs. For example, Katie Brown of Harford County sent out 360 letters and received only 12 back. Ms. Wagner noted that we do not know voter intent, so it is possible that some people on the list may say that they want to register, but have no intention of doing so. Ms. Wagner will be working with her counterpart at the MVA, Tom Surock, to try to determine where the 12 came from – was it one particular MVA agency.

Voting System

-Statewide Post Election Maintenance Document

The Statewide Post Election Maintenance Document has been updated and is in final review. It will be published to the local boards soon. This document defines uniform statewide maintenance procedures to inspect all voting units in Maryland after an election. Montgomery County was the test bed for these procedures. Once the finishing touches have been made, it will be sent out to the other counties.

-Work Planning Session

The voting system team is working with Diebold to develop a project plan outline for the 2006 Gubernatorial Election. Once the outline is defined, local boards will assist with defining the details. The focus of the project plan at this point is to bring Baltimore City on the statewide voting system.

-Baltimore City - Phase III Contract Modifications

The team is working with Diebold to define the contract modification details. The voting system team plans to have the contract before the Board of Public Works in June.

-Brennan Center

The Brennan Center for Justice at NYU School of Law and the Electronic Privacy Information Center (EPIC) are co-sponsoring the development of a Voting Technology Assessment Report. The purpose of the report is to assess the voting technologies that will be available in 2006. The assessment will measure how well the various technologies advance the goals of security, accessibility, accuracy, and cost effectiveness, among others. They hope to release the report by summer, 2005, so that it can play a part in the states' upcoming decisions about what voting systems have in place in 2006. Staff has been participating on this team in the areas of cost and security. Pam Woodside is participating on the security team. Linda Lamone co-chairs the Cost Team with Paddy McGuire, Deputy Secretary of State for Oregon.

Absentee Postage Due Report

Before the election, SBE, made a policy decision to require the counties to pay for insufficient postage on absentee ballots. The Board also established a policy to require the counties to report the costs of paying for the insufficient postage. To date, 15 counties have responded to an e-mail request for the report. Most counties report little or no impact. Montgomery County reported \$8,518.38 was spent in return mail permits, but were unable to determine how much of that was for absentee ballots. Prince George's County reported similar issues.

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IT Projects

Before turning to the next topic on the meeting agenda Mr. Burger asked to talk about IT Projects. First, he noted that the location of his precinct on the Maryland State Archives' "Who Are Your Elected Officials" website was still incorrect. Ms. Woodside asked to speak to Mr. Burger about this after the meeting; perhaps she was looking at the wrong website.

Mr. Burger also stated that in the Board's packets last month, a draft of a new SBE website homepage was provided. Mr. Burger noted that the Board's reaction to the draft was favorable and asked staff to implement the change, with one small modification: switch the left navigation bar (the Board mission and member and staff names) with the right navigation bar (site menu). Ms. Woodside informed Mr. Burger that the Department of Budget and Management guidelines for websites for the State require the homepage be organized as presented. Mr. Burger gave the okay to utilize the new design as it was presented without modification.

ATTORNEY GENERAL'S REPORT

In the *Schade* case, nothing had happened since the election. However, on February 22nd, the Circuit Court ruled on the State's motion to dismiss that was filed before the election. The court dismissed some of the counts and denied dismissal on other counts. That meant that we had to file an answer on March 9. Nothing has happened since then.

In the *Green Party* case, we are now in the process of filing briefs in the Court of Appeals. That is on the Green Party's petition for attorney's fees. We won in the Circuit Court, but the Green Party is appealing that. The Green Party's brief was due originally yesterday but we extended that until next Monday (March 28), and SBE will also have a little more time (until May 4).

The *Ross* case was argued before the Court of Appeals on March 9^h. There has been no decision on that. We do not know how soon a decision will be made. Subsequently, we have gotten two additional petitions for declaratory ruling from Mr. Ross and Ms. Floyd. We just got those a couple of days ago, so I will be making a recommendation, probably at the next Board meeting.

The *Hufnagel* case is another Green Party case dealing with the 2002 election. Based on the Green Party decision of the Court of Appeals, Hufnagel was remanded to the Circuit Court for Anne Arundel County, and we are proceeding with that case. The Court has ordered us to submit to a settlement process and has set that for June. The actual trial is scheduled in the fall.

Diebold dismissed its contract claim for interest on the eve of our having to submit the record to the Board of Contract Appeals.

We have been getting a number of questions from the Libertarian Party about our Voter Registration volunteer rules, especially as they relate to payment of volunteers and the fact that volunteers are not allowed to encourage people to register with one particular party. Our procedures and our affidavits state that volunteers have to accept the voter's own decision regarding party affiliation.

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Ms. Beck asked if the Libertarians had raised any question of wanting to work at the polls. Ms. Arnold replied "no".

Mr. Burger asked that the Board be kept informed on these issues.

LEGISLATION

General Information

Ms. Lamone stated that the two most significant bills for election administrators are SB 478, which requires early voting, and HB 5 (and the Senate companion SB 287), which address a number of issues. Ms. Beck noted that early voting would be very difficult to administer and very costly for the local election officials. Ms. Lamone stated that the experience in other states has been that administration of early voting is not overly burdensome and that the benefits of alleviating polling place crowding outweighed any administrative difficulties.

Ms. Lamone asked Mr. Goldstein to explain HB 5/ SB 287. Mr. Goldstein said that most significant aspect of the bills is that they require local canvassing boards to count all races for which a provisional voter is eligible to vote. Originally this was the approach that the Guidelines required, but the Attorney General's office determined that it was not consistent with State law. The proposed legislation now provides that partial counting of provisional ballots is permissible. In addition, the legislation establishes that if a voter is challenged, the voter can provide the specified identification and then be authorized by the election judge to vote a regular ballot. Currently, if a voter is challenged, the voter must vote a provisional ballot, regardless of whether identification is provided. The legislation also addresses issues regarding law enforcement and security at the polls on Election Day. Finally, the legislation has several un-codified sections that require the Board to review and report on several administrative issues.

Mr. Burger requested a summary be provided after a review of the amendments.

Ways and Means Committee Demonstration

Ms. Lamone reported that last Friday, the Ways and Means (W&M) Committee staff worked with Mr. Goldstein and the staff to put together a demonstration of some of the technology that has been developed to verify voting on the electronic voting system. There were seven vendors. The W&M invited members from their counterpart committee of the Senate to join them. There was mixed reaction to it, but Ms. Lamone thought it showed the members and the audience, that there is a whole new industry developing, and there are some interesting ideas that are coming out to allow for an independent verification without paper.

There were four really viable options: Diebold, Democracy Solutions, Vote Here, and SCYTL (the Spanish company). SBE is preparing a comparative analysis report, which will be shared with the Board members.

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APPROVAL OF PETITION

Ms. Duncan provided the Board with a revised Statewide Referendum and Public Local Law Referendum filing procedures information package along with revised petition signature page for referendum and new party. The procedures and forms incorporate changes as a result of the Populist Party/Nadar Court of Appeals ruling wherein local election boards can no longer invalidate a petition signer merely for signing a wrong county signature page. Ms. Duncan advised that the same changes would be incorporated into other petition information in the near future. The Board approved the revised procedures and forms. The updates will be available for easy access on the State website.

Old Business

Mr. Burger noted that at the last meeting the issue of whether to grant increases to employees who had received CERA certification had been deferred until this meeting. Mr. Burger asked Mr. Goldstein to explain the relevant issues. Mr. Goldstein stated that there seemed to be unanimous agreement among all parties that encouraging continuing education was important to employees as well as the prestige of elections administration. However, there were questions about how to administer the increases. Mr. Goldstein noted that a policy should make sure that all employees have equal access to educational opportunities. Further, if a step increase is given, does the employee have to keep up the certification in order to continue receiving the increase? Finally, what other educational programs should be recognized? Mr. Burger noted that it would probably be easiest to simply grant a one-time bonus for an employee who completes an education program. Pat Matsko, Carroll County Election Director, noted that CERA does require on going education in order to remain certified. Ms. Beck wants to “declare herself proactive” on this. Ms. Beck is in favor of continuing education to help staff: learn about the latest technologies. Mr. Burger asked staff to develop a proposal for the Board’s future consideration.

NEW BUSINESS

Ms. Beck received an email from a member of the Anne Arundel County Board of Elections. His name is Jerry Grant. “The Anne Arundel County Election Board, of which I am a member, uncovered 7 cases of double voting, whereby votes were cast in the regular manner and then also as provisional ballot...Could you at the State level query the Boards to see how many cases they uncovered and what action they took to insure the integrity of our elective process? Also, I would request that these discoveries be publicized without names, just to let the public know that, number one, we do check every vote and, number two, fraud will be dealt with.” Mr. Goldstein said that he has had a conversation with the State Prosecutor, and he is ready to investigate any such case. Ms. Beck made a motion, seconded by Mr. Boston, that we query the local boards for numbers of related cases. The Board unanimously approved the motion. Mr. Burger authorized Ms. Beck to respond to Mr. Grant and tell him that the issue was discussed and thoroughly reviewed.

SCHEDULING OF NEXT MEETING

The next meeting of the State Board will be held on April 26, 2005 at 1:30 p.m.

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CLOSED SESSION

Mr. Burger read the following statement, “Statement for Closing A Meeting, State Board of Elections: The State Board of Elections voted to hold a closed session in order to consult with staff and counsel about the pending RFP for a statewide voter registration system and the selection of the successful offeror to whom a contract will be awarded. A closed session is permitted under State Government Article, § 10-508(a)(7) and (14).” Public discussion would adversely impact the ability of the State Board to participate in the competitive proposal process.

ADJOURNMENT

The meeting was adjourned at 3:30p.m.