

September 3, 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
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
Beth Buck, Budget Analyst
Judith Arnold, Assistant Attorney General
Jim Pettit, Public Information Officer, Department of Environment

Also Present: Barbara Jackson, Election Director, Baltimore City Election Office
Sam McAfee, Baltimore City Voting Machine Programmer
Molly Neal, Election Deputy Director, Harford County Election Office
Guy Harriman, President, Howard County Election Board
Robert Antonetti, Election Director, Howard County Election Office
Nancy Dacek, President, Montgomery County Election Board
Robin Downs, Election Director, Prince George's County Election Office
Sara Harris, Manager, Election Administration Services, Montgomery County
Election Office

Absent: Hilda Pemberton, Member

DECLARATION OF QUORUM PRESENT

After establishing the presence of a quorum, Chairman Burger called the meeting to order at 2:13 p.m.

APPROVAL OF MINUTES OF MEETING OF AUGUST 20, 2003

The Board voted to defer approval of the August 20, 2003 minutes until such time as they have had the opportunity to read the minutes.

September 3, 2003

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

ADDITIONS TO THE AGENDA

None

ADMINISTRATOR'S UPDATE

Ms. Lamone introduced Jim Pettit, Public Information Officer on loan to SBE from the Department of the Environment. Mr. Pettit stated that he is looking forward to working with SBE. Mr. Burger added that he is happy to have Mr. Pettit on board.

Departmental Legislation

Mr. Goldstein explained Proposal #1 which requires a voter to present a valid and current photo identification or a copy of a utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter in order to be allowed to vote a regular ballot. The bill also provides that a voter who is unable to provide identification will be allowed to vote a provisional ballot.

Mr. Wittstadt raised the issue of whether the acceptable types of identification should be specified in the legislation. It was decided that it would be better to provide this type of specification in regulation. Mr. Wittstadt offered a motion to this effect. The motion passed. Finally, Mr. Wittstadt questioned the provision in the legislation that requires all voters who indicate a change of address to vote a provisional ballot. Mr. Goldstein informed him that this was done to correspond to the provisional guidelines, but that it was still an open issue that will be discussed during a meeting on September 17, 2003.

Ms. Trella explained Proposal #2 which is a technical proposal, which brings the Election Law Article into compliance with current procedures. The proposal alters the definition of "ballot" and "official ballot" to include provisional ballot; removes references to punchcard ballots and voting custodians for mechanical lever voting machines since neither punchcard voting systems nor mechanical lever voting machines are used in Maryland; removes a duplicative provision for an appeal of a rejection of an absentee ballot application; removes a reference to the Federal Election Commission which is no longer responsible for prescribing voter registration forms; removes a provision concerning a change in address at the MVA to more accurately reflect the National Voter Registration Act; uses language to accommodate the use of a Direct Recording Electronic voting system; and in the provision making adding and deleting votes a crime, uses a broader term of receptacle to include the bag into which provisional ballots are deposited.

Ms. Arnold reminded the Board that they discussed departmental legislation concerning Title 3 of the election code at the August meeting. The current law is written from the perspective that voter registration is a county-by-county function but needs to be amended at a future legislative session to reflect the State responsibilities under HAVA.

September 3, 2003

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

Departmental Legislation (Continued)

Following the discussion of the departmental legislation, on a motion by Mr. Wittstadt, seconded by Ms. Beck, the Board approved the departmental legislation with changes.

COMAR Regulations

Ms. Lamone directed the Board's attention to a packet in their folders concerning seven chapters of COMAR regulations to be considered for final adoption at the next State Board meeting. Mr. Torre recommended that the Board review the statement of purpose in each set of regulations, which explains the intent of the amendments to the regulations. He added that any comments should be provided prior to the next meeting. Ms. Arnold advised that if substantive changes are made, the regulations will have to be repropose.

HAVA Funds

Ms. Lamone reported that she has been notified that the State has received funds that are dedicated for accessibility. Mr. Burger asked how the funds will be distributed to the local boards. Ms. Lamone and Ms. Trella explained that the funds will be used to educate election officials, to improve outreach to voters, and for polling place accessibility. The first part of official training is expected to begin at the biennial meeting. Mr. Burger also asked if SBE will hold the funds in custody rather than writing guidelines for the local boards to spend the money.

Ms. Trella advised that the HAVA team will begin regional local board training for handling identification requirements for first time voters. The first meeting will be held on September 15th on Maryland's eastern shore. Ms. Trella assured the Board that all regions will be visited.

Condolences

Ms. Lamone advised the Board that Sara Rank, former Election Director of the Allegany County Board of Elections and former president of MAEO, passed away on Saturday, August 30th.

Biennial Meeting Agenda

The Board discussed items that could be included on the agenda and potential speakers for the 2003 Biennial Meeting.

A request was made to devote a portion of the meeting to a review of local board Presidents' responsibilities for the conduct of meetings and other specific duties. Ms. Duncan

September 3, 2003

State Board Meeting

151 West Street, Suite 200, Annapolis, Maryland 21401

explained that while this was a sound idea, because most board Presidents are of one political party, the perception of non-partisanship was questioned in the past. Accordingly, meetings held for board members have since been inclusive for representation by both majority political parties.

Biennial Meeting Agenda (Continued)

Mr. Burger added that he is sensitive to claims of partisanship but it is good to have board members to collaborate on policy matters. He suggested that the meetings should be continued to achieve that objective with an appropriate amount of bipartisan involvement.

In response to a question raised by Mr. Burger concerning invited speakers, Ms. Lamone advised that Lt. Governor Michael Steele, Mr. Dick Smolka, Election Administration Reports and Ms. Ann Gordon, Statewide EEO Coordinator from the Office of Human Resources, have agreed to make presentations or to speak at lunch and dinner.

ASSISTANT ATTORNEY GENERAL'S UPDATE

The Board was provided with a copy of a motion for reconsideration in the case of Maryland Green Party, et al. v. Maryland Board of Elections, et al. which was filed on August 27th. Ms. Arnold advised that there is no particular date by which this has to be acted upon. Ms. Arnold also stated that the Court of Appeals could ask that some issues be rebriefed.

In the Poole litigation, a hearing on the Defendants' motion to dismiss was held on August 29th. The Defendants' main argument was that HAVA precludes an American with Disabilities Act (ADA) suit. The judge denied the motion to dismiss, though he agreed that HAVA was important to take into consideration later in the case. A trial is scheduled for October 17th.

BALTIMORE CITY VOTING SYSTEM

At the August meeting, the President of the Baltimore City Election Board requested that the Board approve an upgrade to ten AVC Advantage Voting Units. The Board requested an opinion of the Attorney General concerning the State Board's ability to approve the Baltimore City request under existing law. Ms. Arnold concluded that the Board is not precluded by law from approving the Baltimore City request, adding that this is a policy decision.

The Board discussed the ramifications of approving the request and the payment of the cost for the requested upgrade. Mr. Burger added that there is a real value to satisfy visually impaired voters and that the cost of an upgrade is really the issue. Ms. Jackson stated that she has spoken with the voting

September 3, 2003

State Board Meeting

151 West Street, Suite 200, Annapolis, Maryland 21401

system vendor, who has advised her that they are willing to pay for programming. Ms. Jackson added that the request to upgrade 10 units is to avoid being sued by voters who are visually impaired.

Mr. Wittstadt suggested that the Baltimore City Board consult with its attorney to find out if it will run into equal protection issues if it only put updates in five precincts, and if it can transport a voter to a different precinct with the same ballot. Mr. Torre added that the software as well as firmware on the election management system must be changed. Also, Baltimore City has to ensure that testing has been done with the software management system, for which the manufacturer will bear the cost.

OLD BUSINESS

None

NEW BUSINESS

None

BIENNIAL OCTOBER MEETING

The next meeting of the State Board will be held between 3:30 and 4:30 p.m. following the adjournment of General Session of the Biennial Meeting on Monday, October 20, 2003.

Mr. Antonetti asked if there will be sessions to inform on new voting systems, absentee voting under the new voting system or on the manual for election judges training. He also asked when the local boards could expect to receive information on these issues if they will not be discussed during the biennial meeting. Mr. Burger advised that SBE is working on the biennial agenda. He suggested and encouraged Mr. Antonetti to send in suggestions and bring his concerns to the attention of SBE.

CLOSED SESSION UNDER STATE GOVERNMENT ARTICLE, §10-508(a) (1), (7) AND (8) TO DISCUSS PERSONNEL ISSUES AND TO CONSULT WITH LEGAL COUNSEL AND STAFF ABOUT PENDING OR POTENTIAL LITIGATION

On a motion by Ms. Beck, seconded by Mr. Wittstadt, at 3:26 p.m. the State Board of Elections voted to hold a closed session in order to discuss personnel issues and to receive information about the voting system analysis being conducted by Science Applications International Corporation and to consult with staff, consultants, and legal counsel about pending or potential litigation. A closed session is permitted under State Government Article, Sec. 10-508(a)(1), (7), and (8).

ADJOURNMENT

September 3, 2003

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

Following the Executive Session at 5:59 p.m., the Board voted to adjourn the regular Board meeting.

CLOSED SESSION ON AUGUST 20, 2003

On August 20, 2003, the Board held a closed session in accordance with State Government Article, Section 10-508(a)(7) and (8), to discuss the voting system analysis being conducted by Science Applications International Corporation. No other topics were discussed, and no formal action was taken. Those present were Gilles burger, Joan Beck, Susan Widerman, Linda Lamone, Tim Augustine, Joe Torre, Pam Woodside, Donna Duncan, and Judy Arnold. A statement for Closing Meeting was filed with the August 20th Board minutes.