

February 14, 2005

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

Attendees: Gilles Burger, Chairman
Joan Beck, Member
A. Susan Widerman, 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
Terry Harris, Deputy Director of Campaign Finance
Joe Torre, Procurement Officer
Jan Hejl, Voter Registration Manager
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: Stuart Harvey, Frederick County Election Director
Dave Laning, Baltimore County Resident

DECLARATION OF QUORUM PRESENT

Mr. Burger called the meeting to order at 1:30 p.m., declared that there was a quorum, and wished everyone a happy Valentine's Day.

APPROVAL OF MINUTES OF MEETING OF JANUARY 11, 2005

On a motion by Mr. Boston, seconded by Ms. Beck, the minutes were approved with proposed non-substantive changes.

While discussing the minutes from the January meeting, Ms. Widerman pointed out that, despite the contrary assertion by former Board member Raynor, she did not take minutes in December when the Board members met prior to the Electoral College. The Board members agreed that the December meeting was not an official Board meeting and therefore minutes would not be drafted.

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ADMINISTRATOR'S UPDATE

Administrative Complaints

Ms. Lamone reported to the Board that on January 21st two administrative complaint hearings were held. The Complainants filing these complaints were poll watchers to whom voters relayed their voting experiences. The voters did not testify or provide written evidence at the hearing. For both hearings, Linda Pierson (a former Board member) served as the hearing officer, and the State Board staff served as respondents.

The first hearing concerned whether certain voting units provided voters with the opportunity to correct their selections and review their ballots before pressing the "cast ballot" button. To rebut the complainant's allegations, evidence was presented that demonstrated that neither a software malfunction nor an incorrectly calibrated touchscreen occurred to cause these alleged failures.

The second hearing concerned whether provisional ballots were properly administered by election judges. Evidence was presented that showed that State law, procedures, the election judges' manual, and other handouts comply with the requirements of the Help America Vote Act.

The final determinations are due in early April. Mr. Burger asked about the level of attendance at the hearings. Ms. Lamone responded that there were no members of the public in attendance other than the complainants.

Voting Systems

Ms. Lamone discussed the Lessons Learned meeting held on January 18th with the 24 LBEs. Ms. Lamone stated that the local boards provided valuable information and suggestions to improve the implementation process for the new voting system. From this meeting SBE staff developed a list of the top priority action items to be considered when developing the voting system work plan. Mr. Burger recognized Ms. Beck for being in attendance at the conference all day.

Ms. Lamone stated that work-planning sessions are in progress to lay out the tasks, resources, and schedule for the next election cycle. The work plan will identify the resources and time required to implement tasks through December 2006. Additionally, the work plan will address the top priority items in the Lessons Learned Prioritization Worksheet.

The Voting System Team has begun working on Phase III (Baltimore City implementation) of the Diebold contract. They have started to gather the necessary information to determine the number of voting units, optical scan tabulators, and encoders required for Baltimore City. Baltimore City has provided its registered voter count by precinct to support this effort. Ms. Lamone reported that the team has also been

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working with the City of Annapolis on its November 2005 election. Ms. Lamone recognized the efforts of the Anne Arundel County Board of Elections in support of the City of Annapolis elections.

Ms. Lamone noted that Accenture's contract expired on February 4th. They completed their transition to the SBE staff and provided several binders of work products.

Local Board Issues

Talbot County

Ms. Lamone informed the Board that the Talbot County Election Board has sent a request to the State Board to establish specific office requirements for that, local board. Mr. Burger noted that he also received this request. Ms. Lamone stated that, during the next month, staff would visit the Talbot County office and warehouse, review their needs, and develop requirements for Board approval.

Howard County

After the 2004 General Election, the Howard County Board of Elections sent letters to those voters whose provisional ballot applications were rejected. These letters stated that the voters had the opportunity to "appeal" the decision of the local board by writing to the State Board of Elections. Although it was not clear from the letter, it appears that the "appeal" language refers to the administrative complaint procedure. The letter did not, however, fully describe what is necessary to file an administrative complaint (i.e., that the complaint must be sworn and notarized).

Mr. Burger questioned whether this type of notice is required. Ms. Arnold responded that it is not required. At one time, the law provided the right to appeal the decision of the local board of canvassers within 5 days.

Ms. Lamone stated that the Howard County Election Director has been instructed that, if the County intends to continue sending these letters, the letter must contain full information about filing an administrative complaint or must refer voters to the instructions and form on the SBE website.

Washington County

Ms. Lamone informed the Board that the Washington County Board of Elections contacted SBE requesting assistance with the Washington County Board of Education. The Board of Education is scheduling events on election day that will greatly impact various polling places. Election Director, Dorothy Kaetzl, has attempted to remedy this, to no avail. Ms. Lamone stated that she and Mary Wagner met with Delegate Chris Shank, Chairman of the Washington County delegation, to request his assistance with this matter. Delegate Shank agreed to provide his assistance.

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Ms. Widerman asked why it is a problem having an in-service day on election day. Ms. Lamone responded that many teachers serve as election judges and parking becomes an issue. Mr. Burger suggested seeking the assistance of former Board member Ralph Wachter with this issue.

Voter Registration System – RFP Evaluation

Ms. Lamone informed the Board that the Evaluation Committee for the Voter Registration System is reviewing the proposals received from vendors. On February 1 through 3, the vendors gave oral presentations to the Committee on their project management approach and the attributes of the VRS systems they are proposing. Committee members are now checking vendor references and preparing letters to the vendors to obtain clarification on questions about the proposals, or to identify deficiencies in the proposals that need to be “cured.” After the vendors respond to these cure letters, and all matters dealing with the technical proposals have been resolved, the Committee will then look at the financial proposals. If everything remains on track, the Committee is working toward a contract award in middle to late March.

Ms. Lamone also informed the Board that Glen Newkirk was engaged to serve as a consultant to the Committee. Mr. Newkirk’s assistance and technical expertise have thus far been invaluable to the Committee.

Budget

Ms. Lamone informed the Board that the first budget hearing went very well and that only a \$24,000 cut in contractual services has been proposed. Ms. Lamone also noted that the legislative budget analyst has recommended against using any general funds for HAVA purposes while federal funds are still available. This is consistent with State policy to always use federal funds before State general funds. Ms. Lamone recognized the hard work of Jessica Jordan, the agency’s budget officer.

E-Poll Books

Ms. Lamone noted that Diebold representatives presented members of the MAEO Electronic Poll Book Committee and SBE staff with a demonstration of the Diebold ExpressPOLL 4000 on Monday, February 7, 2005. The Board members confirmed that they had received a copy of the presentation. The ExpressPOLL 4000 will be tested in the City of Salisbury municipal election this spring. Ms. Lamone pointed out that Nikki Trella and Jaimie Jacobs will be serving as election judges during the Salisbury election.

ASSISTANT ATTORNEY GENERAL’S REPORT

Ms. Arnold informed the Board that she had submitted a written report prior to the meeting. She pointed out that the *Ross v. SBE* action for injunctive relief is now in the Court of Appeals. The *Ross* case involves the certification of Paula Johnson Branch

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despite her campaign committee's outstanding late fees. Ms. Arnold reported that a brief for the Court of Appeals is due next week.

Ms. Arnold also updated the Board about the status of *Hufnagel v. State Board of Elections*. The *Hufnagel* case was the companion case to the *Green Party* case. Since the legal issues were decided in the *Green Party* case, and since the 2002 election is no longer relevant, the Attorney General's Office will be arguing at the February 23rd pretrial conference that the case should be dismissed.

Finally, Ms. Arnold noted that Diebold is continuing to seek non-binding arbitration in connection with its appeal to the Contract Appeals Board.

Mr. Burger asked about the Title 14 waivers. Ms. Arnold replied that Title 14 requires a business entity that does business with the State (for consideration in excess of \$100,000) and makes campaign contributions in excess of \$500 to file a contribution disclosure report. In addition to listing contributions made, filers also have to list all of the business that they are engaged in with the State (or unit of State or local government). The Attorney General's Office has the authority to waive the requirement to report business done with the State if it is determined that requiring the information would be unduly burdensome for the filer. Ms. Arnold stated that generally this waiver is reserved for banks and utility companies, which have numerous government contracts.

WAIVER OF LATE FEES

Mr. Burger noted that the State Prosecutor's office recently issued a press release concerning the filing of charges against 53 individuals for failure to file campaign finance reports or pay late fees. Mr. Burger expressed his appreciation to the State Prosecutor for his pursuit of this issue and felt that it was consistent with the Board's ongoing efforts to ensure that committees are properly filing. Mr. Burger also recognized the efforts of the campaign finance staff in this regard.

Mr. Burger then asked Ms. Harris to explain the late fee waiver process to Mr. Boston, since this was his first meeting in which waivers were considered. After Ms. Harris' explanation, Ms. Beck moved to accept the Administrator's recommendations to waive the late fees. Ms. Widerman seconded that motion. Mr. Burger questioned whether the issue that resulted in late fees for Friends of Paul F. Harris had been resolved. Ms. Harris stated that she would ensure that the matter had in fact been resolved. The Board unanimously approved the Administrator's recommendations to waive the following late fees:

1. Friends of Paul F. Harris - \$80
2. Laborer's District Council PAC - \$110
3. Public School Accountability PAC - \$250
4. Maryland Nurses Association PAC - \$200

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5. Baltimore County Democratic Central Committee - \$250
6. Maryland State Professional Firefighters PAC - \$80

ADMINISTRATIVE CLOSURE OF CAMPAIGN FINANCE ENTITIES

At the request of Mr. Burger, Ms. Harris explained to Mr. Boston the Board's authority to administratively close campaign finance entities. After the explanation, Ms. Wideman moved to accept the recommendation of the Campaign Finance Division and close the following campaign finance entities:

1. Friends of Dwight Pettit
2. Day Gardner for Delegate

Mr. Boston seconded the motion. The Board unanimously agreed to the administrative closures.

LEGISLATION

Ms. Lamone briefed the Board members on the status of election-related legislation.

~~///~~ Two of the three proposed departmental bills have been filed. HB 723 is the voter registration bill and HB 677 is the bill regarding nomination of candidates and certification of questions. The third proposed departmental bill (regarding requiring voters to show identification at the polls) had not yet been filed.

~~///~~ HB 642 (Delegates Bates and Barkley) – Election Law – Campaign Finance Organization and Reporting Requirements – Revisions. This bill creates changes to the campaign finance laws by adopting all of the recommendations made in the SBE late fee report that was submitted to the budget committee. Stuart Harvey, Election Director for Frederick County, noted that the MAEO legislative committee took a position in support of this bill.

~~///~~ SB478 – Election Law – Early Voting (Senator Miller, et al.). This bill establishes early voting beginning the second Friday before the election and ending on the Friday immediately before the election. Mr. Burger suggested that early voting seems complicated with respect to where the precincts or voting centers should be located. Ms. Lamone responded that the bill addresses this issue by requiring polling centers to be established based on recommendations by the political parties. Ms. Beck stated that this appears to be another burden on local boards. Mr. Harvey stated that MAEO is opposing the legislation because of the fiscal implications. Mr. Harvey also noted the possible tax implications for election judges who make over \$1,000 in a year (which could potentially happen with early voting). Ms. Lamone responded that in other states where early voting has been implemented it is overwhelmingly liked by the voters (in some states over 50% of the voters voted early) and helped reduce the number of provisional ballots.

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- ~~✍~~ Ms. Lamone commented on her testimony before the Senate on voter verification legislation (SB9 and SB63). She explained that the testimony went well and that Senator Dyson seems to be convinced that a paper trail is not necessary for verification.
- ~~✍~~ Mr. Burger questioned the status of HB 622, absentee voting on demand. Ms. Duncan explained that the bill removes all qualifications for voting by absentee ballots. Mr. Harvey noted MAEO's support for this legislation. Mr. Burger reiterated the Board's opposition to this proposed legislation.
- ~~✍~~ Several bills have been introduced altering the method of election for circuit court judges. (One of the bills is a result of the *Seussman* case, in which the plaintiffs unsuccessfully asserted the right of unaffiliated voters and voters affiliated with non-principal political parties to vote for judge in a primary.) Ms. Duncan will be at the hearing to answer questions that the committee members might have; however, SBE will not take a position on any of the bills.
- ~~✍~~ Several bills are being monitored because they involve constitutional amendments (which have to be placed on the ballot). These bills include video lottery terminals and disposal of parklands.
- ~~✍~~ Ms. Lamone noted that Delegate Boschert's bill requiring identification of voters at the polls is scheduled for a hearing on Thursday. She noted that the bill is flawed, because it violates HAVA by not requiring that a provisional ballot be issued to a voter who cannot satisfy the ID requirements.
- ~~✍~~ Ms. Lamone mentioned that staff may provide background information on HB 376, which requires a local board of elections to send an absentee ballot to each disabled or elderly registered voter who qualified to vote by absentee ballot at a previous election. This bill would be very difficult for the local election officials to administer.

VOTER TURNOUT

Ms. Lamone pointed out to the Board that the voter turnout statistics were in their folders. Ms. Duncan stated that the numbers were still being reviewed and checked against the numbers assembled by Ms. Trella for the EAC. Ms. Duncan and Ms. Trella acknowledged that there were still some discrepancies that needed to be studied and resolved. They will be working with the local election directors on this project. Ms. Duncan, responding to a question by Mr. Burger, stated that Maryland has filed all required documents with the EAC.

CITIZENSHIP CHALLENGES

Ms. Trella stated that she had previously distributed to the Board members a draft memorandum on the steps a local board of elections should take if the board receives information that a registered voter is not a U.S. citizen. Ms. Trella explained that the National Voter Registration Act requires certain list maintenance activities and that § 3-

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502 of the Election Law Article is consistent with the NVRA in identifying grounds for removing a voter from a voter registration list. Information concerning a voter's eligibility that does not fall within the grounds specified under § 3-502 cannot be used to remove the voter from the voter registration list. The challenge procedure outlined in § 3-602 provides the process for a local board to remove a voter based on information not listed in § 3-502.

Based on comments received from the Board members, Ms. Trella proposed replacing "should" with "shall" in the second sentence of the third paragraph. This revision would require a local board of elections to follow-up on any information received concerning a registered voter's citizenship status. With this change, the local boards would be required to: (1) request that the individual asserting that the voter is not a U.S. citizen provide information to substantiate the claim; and (2) notify the challenged voter that the local board has been advised that he or she is not a U.S. citizen and request evidence of citizenship from the voter.

Ms. Trella explained that § 3-602 authorizes a local board to initiate a challenge if the local board has "reason to believe" that a registration has been erroneously added to the voter registration list. This section also specifies that an individual cannot be removed from the list unless the "individual's ineligibility is substantiated by affirmative proof." Mr. Burger indicated his desire to require the local boards to initiate a challenge. There was a discussion as to whether the local board could be required to initiate a challenge if the voter did not establish his or her citizenship status when requested by the local board. The Board agreed that the language of § 3-602 gives the local boards discretion to determine whether there is "reason to believe" that a registration has been erroneously added to the voter registration list.

Mr. Burger questioned why a registered voter would not want to prove his or her citizenship and noted that the voter should have the responsibility to prove his or her citizenship. Ms. Trella noted that § 3-602 places the burden of affirmative proof on the challenger, not the voter. Mr. Goldstein noted that a provision of the State Constitution states that the voter registration list is conclusive evidence of the qualifications of the voter. Accordingly, it is the burden of the challenger (not the challenged voter) to provide sufficient evidence to remove the challenged voter. Mr. Goldstein also noted that the policy being established will be significant even though it does not require the initiation of a challenge because it requires at least some action on every allegation of non-citizenship.

The Board members approved requiring the local boards to follow-up on any information received concerning a registered voter's citizenship status.

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SAMPLE BALLOTS

Donna Duncan reminded the Board members that at the last meeting they were given examples of different sample ballots used during the last election. Ms. Duncan stated that she was in the process of developing standards and requested the members' input. Mr. Burger stated that the focus should be eliminating inconsistencies and establishing more uniformity. Ms. Duncan responded that doing so would likely necessitate specific guidelines. Ms. Widerman noted that the Frederick County sample ballot was very nicely laid out. In fact, when Ms. Widerman showed it to Baltimore County election officials, they preferred it to their own. Stuart Harvey, Frederick County Election Director, noted that his county had the advantage of not having questions on the ballot. Nonetheless, Ms. Widerman noted that the design features in Frederick County's sample ballot are worth careful reviewing.

OLD & NEW BUSINESS

Ms. Beck stated that she had received a request for certain election-related data. The staff offered to follow up on the request.

Mr. Burger asked whether the names and addresses of election judges are public information. Ms. Lamone informed Mr. Burger that names are available to the public, but not the addresses, since judges are considered State employees and therefore their personal information is confidential.

Mr. Burger noted that he received a letter from the Federal Voter Assistance Program praising the efforts of Ms. Trella for her work with the Internet Voting Assistance System.

Mr. Burger stated that he received a copy of a complaint from Senator Hafer regarding the legislative district look-up utility on the State Archives website. Mr. Burger noted that he entered his information and it also incorrectly identified his legislative district. Ms. Woodside indicated that, while this is not a site maintained by SBE, she had received information that the problem had been fixed. Ms. Woodside stated that she would follow up to make sure that the problem has in fact been resolved.

Mr. Burger stated that he received a request from MAEO for financial compensation for election officials who have received a CERA certificate. Mr. Burger noted that he looks forward to hearing about this in the near future.

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SCHEDULING OF NEXT MEETING

The next meeting of the State Board will be held on March 22, 2005 at 1:30 p.m.

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 a petition for declaratory ruling and related pending litigation. A closed session is permitted under State Government Article, § 10-508(a)(7) and (8)." Ms. Widerman then made a motion, seconded by Ms. Beck, for a closed session. On a roll-call vote, members voted in the affirmative.

ADJOURNMENT

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