

MARCH 22, 2004

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Susan Widerman, Member
Rick Menikheim, Member-Designate
Linda Lamone, Administrator
Donna Duncan, Director of Election Management
Mary Wagner, Deputy Director of Election Management
Ross Goldstein, Director of Candidacy and Campaign Finance
Pam Woodside, Director of Information Technology
Terri Harris, Deputy Director of Campaign Finance
Joe Torre, Procurement Officer
Nikki Trella, Election Reform Director (HAVA)
Jaimie Jacobs, Election Reform Deputy Director

Also Present: Steve Hinz, Accenture
Courtney Keith, Accenture
Gil Genn, Lobbyist for Diebold
Barbara Fisher, Election Director, Anne Arundel County Election Office
Charles Deegan, President, Prince George's County Board of Elections
Robin Downs, Election Administrator, Prince George's County Election Office
Stuart Harvey, Election Director, Frederick County Election Office
Guy Harriman, President, Howard County Board of Elections
Henry C. Marshall

DECLARATION OF QUORUM PRESENT

After establishing the presence of a quorum, Mr. Burger called the meeting to order at 1:40 p.m.

INTRODUCTION OF NEW BOARD MEMBERS

Mr. Burger announced Mr. Mark Wittstadt's recent resignation from the Board and thanked him for his tireless activities and his service to Maryland's voters. Ms. Beck informed Mr. Burger that she had invited Mr. Rick Menikheim, the Governor's nominee as Mr. Wittstadt's replacement, to join the Board members at the front table. The two new Board members plus the two existing Board members are to be confirmed by the Senate this afternoon. Mr. Burger formally extended a warm welcome to Mr. Menikheim from Anne Arundel County. Ms. Bobbi Mack, former President of Prince George's County Board of Elections, will be filling the other vacant Board position.

APPROVAL OF MINUTES OF MEETING OF FEBRUARY 23, 2004

Mr. Burger noted that the Board members had not received the minutes from February 23rd prior to today's meeting. Since the Board members will need time to read the minutes, comments and amendments would be made at a later date.

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ADDITIONS TO THE AGENDA

Mr. Burger added three topics to the agenda: Meeting Minutes, Election Judge Recruitment, and the Minority Business Enterprise (MBE) program. Ms. Beck also requested time to speak about last Tuesday's Lessons Learned Workshop.

MEETING MINUTES

Mr. Burger is pleased to see approved Board minutes available on the State Board of Elections website. With regard to future minutes, Mr. Burger requested that the draft continue to be sent to Board members at least one week before the next meeting.

ELECTION DAY POLLING PLACE VISITS

Ms. Widerman had several items to report on what she concluded had been a very positive day. Ms. Widerman approached a gentleman who was handing out paper trail fliers and felt that her information was positively received. Ms. Widerman had thanked every volunteer for his or her contribution to the Election. One judge expressed his wish that half-day shifts be available. Ms. Widerman was concerned that the layout of voting units at some polling places did not lend itself to assuring voter privacy. Election Judges were open to Ms. Widerman's suggestions to improve the layout. There were some problems with supervisor cards not being encoded with the correct passcode. Ms. Widerman requested a more thorough testing of the supervisor cards before the next election. Mr. Burger noted that 100% of machines were tested, but did not know if 100% of the cards were tested.

Ms. Beck had received a phone call complaint about privacy. Ms. Beck agreed with Ms. Widerman that different configurations should be planned for November to maintain voters' privacy. Ms. Beck noted that a few machines were down and not used during the Primary Election, but it would be critical to have every machine viable for the larger turnout at the General Election. Ms. Beck noted that although there were still a few lingering security concerns, in general, everyone was happy with the voting units and the election was an unmitigated success.

Mr. Burger reported on his visits to precincts in Montgomery and Anne Arundel counties. In general, he was not surprised with the lack of unhappy voters since, of all the DREs on the market, Maryland is using the one with the easiest interface. Mr. Burger expressed concern about the reported privacy issue and noted that the judges' manual addresses privacy during voting unit setup.

Ms. Widerman said a site plan diagram, which the judges had followed exactly, had not shown the units at an angle. Although a person may block the screen from view while voting, there was a perception of little privacy when a voter first walked into the precinct and saw the screens facing out. One precinct had the screens in a horizontal position. Ms. Widerman had advised judges to offer to adjust the screen for any voter who complained about a lack of privacy.

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ELECTION DAY POLLING PLACE VISITS (continued)

Ms. Widerman suggested that angling the voting units should reduce the privacy concerns and improve voters' initial perception of privacy when they first enter the precinct. Ms. Beck agreed on the importance of improving the perception of privacy.

Mr. Burger recognized how important it was for every machine to work on Election Day, but said it was unrealistic to think that none would break. Mr. Burger stressed the importance of pulling any questionable unit out of service immediately. Ms. Beck again emphasized the need to have all machines working for the larger turnout in November. Mr. Burger said much attention would be given to continued support and maintenance. March 2nd had been a very pivotal test, with good results.

Mr. Burger noted that the news reports on Election Day had been mixed, but seemed to lean towards the positive. Ms. Lamone added that the press had been informed about the small number of mixed-up encoders, but she had emphasized it as a human error, not a technological error.

Paul Aumayr (Voting Systems IT) and David Heller (Program Manager for Voting Systems) were asked to join the meeting to address the Board's concern with the incorrectly programmed supervisor cards. Mr. Aumayr informed the Board that every card must be encoded. Mr. Heller explained that Mr. Aumayr and the BSC staff handled the encoding process. Mr. Heller said statistical testing had been done after the cards were encoded. Ms. Widerman asked if testing 100% of the cards during Logic and Accuracy (L & A) was possible. Ms. Downs said the cards were tested during L & A. Mr. Harvey said Frederick County had tested supervisor cards, but some had failed on Election Night. Smartkey cards had failed during L & A testing, and new cards had to be delivered to Frederick County. Mr. Harvey indicated that Frederick County planned to request additional cards for the November election.

Ms. Lamone said evaluation of the Election is still being conducted and these issues have been noted.

LESSONS LEARNED WORKSHOP

Ms. Beck informed the Board of the Lessons Learned Workshop which had been hosted by SBE and attended by county election officers on March 16th. Overall, the workshop had been productive and well attended. The attendees were split into three breakout sessions to identify problems and contribute possible solutions. She noted that the county election officers had been very forthcoming with their concerns. Ms. Beck had observed one breakout session that focused on the judges' manual and the evaluation of the rovers' performance on Election Day. Ms. Beck said she received positive feedback from those in attendance. The counties would be receiving a document summarizing the topics discussed throughout the workshop. A follow-up meeting was scheduled for April 13th.

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LESSONS LEARNED WORKSHOP (continued)

Ms. Lamone clarified that the document to be sent out to the counties would be the minutes from the workshop. Ms. Beck noted that the county election officers had wanted the follow-up meeting to be soon so that issues could be resolved in advance of the next election.

Mr. Burger noted several complaints about the amount of Election Day paperwork. Ms. Fisher agreed that the amount of paperwork was an issue and the reason for the loss of some judges. Ms. Fisher clarified that the increased paperwork was due to the new voting system, the tamper tape, and the printed reports. Mr. Burger noted that this increase in paperwork most likely results from new security mandates. Ms. Fisher confirmed that the issue of extensive paperwork had been discussed during the Lessons Learned Workshop.

Mr. Burger, speaking on behalf of his colleagues, thanked all who had been involved with the entire election process.

ADMINISTRATOR'S UPDATE

VOTERS' REACTIONS

A potential formal Election Day complaint has been received from Mr. Jeffrey Liss, a voter who claims that Senator Mikulski's name did not appear on his ballot. Mr. Burger said Mr. Liss had a letter to the editor published in the Washington Post. Mr. Goldstein said Mr. Liss has indicated he would drop the matter if SBE can prove to him that the name was on the ballot and that he may have just overlooked it. Ms. Lamone said Mr. Aumayr was examining the databases. Another complaint concerning a Board of Education race has already been resolved with the help of Mr. Aumayr.

Ms. Lamone reported that the voters, in general, loved the voting system.

MAEO

Ms. Lamone reported that MAEO conducted its own Lessons Learned Workshop. Mr. Burger asked how the two workshops would correlate. Ms. Downs assured Mr. Burger that the intention of the MAEO workshop was not to go on a separate path from the SBE-hosted workshop.

IT PROJECTS UPDATE

Ms. Lamone reported that the GEMS/EMS interface had worked well on Election Night, although Howard and Montgomery Counties had been delayed in transmitting their results for different reasons.

Mr. Burger had further questions related to GEMS/EMS, so Ms. Woodside was asked to go over parts of the IT Projects Update. In response to various questions from the Board members, Ms. Woodside clarified the process of transferring the election results from GEMS to EMS and the security surrounding the process.

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ADMINISTRATOR'S UPDATE (continued)

IT PROJECTS UPDATE (continued)

Mr. Burger then asked Ms. Woodside to explain i-mail. Ms. Woodside explained that Archives had recommended i-mail, another type of email system, because it is easier to maintain and requires less overhead than the current system. Ms. Woodside then explained that the disaster recovery system had been a temporary setup only for the Election. With regard to the backup wireless connectivity, Ms. Woodside assured the Board that this was for email purposes only and had nothing to do with the voting system.

Ms. Lamone stated that the RFP for the new statewide voter registration system is coming out soon. Mr. John Clark has been working with Mr. Marty Cravatta and the BSC staff to develop the logistics and security requirements.

ELECTION DAY MEDIA

Ms. Lamone indicated that there had been many media-related phone calls on Election Day.

PROVISIONAL VOTING

Ms. Lamone gave a brief summary of the provisional voting status report. The report breaks the provisional ballots into the categories of accepted in full, accepted in part, and rejected. Mr. Goldstein clarified the timeline for canvassing provisional ballots. Ms. Widerman asked about voters requesting provisional ballots because they did not want to use the AccuVote unit. Mr. Goldstein confirmed for the Board that Ms. Linda Schade had provided misinformation about provisional ballots on her Campaign for Verifiable Voting website. Mr. Goldstein confirmed that a voter who is properly on the precinct register is not eligible to receive a provisional ballot and therefore a provisional ballot cast by such a voter was rejected. Mr. Goldstein stated that he would be willing to contact Ms. Schade to clarify this issue. Mr. Burger pointed out that an absentee ballot was also not meant to be used for the sole purpose of a voter's preference for a paper ballot. Ms. Beck recommended more press coverage to inform voters. Ms. Widerman noted that she had spoken to a few voters on Election Day who had requested a provisional ballot in lieu of voting on a DRE machine. Mr. Burger wants the rule clarified for the judges so that it is clear on Election Day. Ms. Fisher and Ms. Downs noted that judges had been given SBE's last-minute instructions, but added that judges had been advised not to take on a voter who became confrontational. The Board members concurred with this advice.

VOTER TURNOUT STATISTICS

Ms. Lamone directed the Board's attention to the voter turnout statistics provided and indicated that the data from four counties was not included. A complete report would be given at a later date.

DIEBOLD CONTRACTS

Ms. Lamone stated her concern that Montgomery and Prince George's Counties had contracted directly with Diebold and that this information had not been shared with SBE. Ms. Lamone had learned of the contracts at the Lessons Learned Workshop. Ms. Downs stated that Prince

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ADMINISTRATOR'S UPDATE (continued)

DIEBOLD CONTRACTS (continued)

George's County had not contracted directly with Diebold. Ms. Lamone noted this correction.

ELECTION DAY TECH SUPPORT

Mr. Burger voiced the concerns of two precincts in Montgomery County regarding available tech support during the General Election. Ms. Lamone said SBE was hoping to enlist tech support personnel from the State and possibly the University of Maryland for the General Election. Ms. Fisher and Ms. Downs added that they each had Election Day support from county employees. Ms. Fisher recommended that SBE provide support to other counties to push local governments to help more on Election Day. Ms. Beck said the judges would always want tech support to be available. Mr. Burger agreed and emphasized the importance of the county infrastructure. Ms. Fisher described the support the county received from Anne Arundel's Board of Education by training school custodians to set up the voting units. Ms. Fisher said that county employees could be involved in the whole process. Ms. Lamone noted that while some county election offices already had positive relationships established within their counties, other county election offices would face difficulties with that task. Mr. Burger stated that getting a blend of people from the counties, the State, and the University would be essential for providing support. Mr. Burger noted that it is on the "front lines" that tech support is most needed and most appreciated.

LEGISLATION

Ms. Lamone reported on current legislation. Our one departmental bill has passed the Senate and is set for hearing in the House. Legislation to raise the maximum age of minors allowed in the polling places was still being discussed. Delegate Owens' bill regarding electronic filing of campaign finances was defeated. Baltimore City's request for exemption on implementing the new voting system was denied by the House, but still in committee in the Senate. There may be amendments to adjust the number of voters allowed per voting unit.

BOARD MEETING MINUTES

Ms. Lamone confirmed that the Board minutes were now being posted on the SBE website. Mr. Burger indicated that he was thrilled that the Board minutes were now accessible to the public, but had some minor concerns with the formatting when the PDF files were opened.

VOTING SYSTEM DOCUMENTATION

Ms. Lamone stated that Ms. Wendy Woodside was compiling a list of all documentation related to the voting system. This has been a very time-consuming process due to Diebold's lack of a document control system for tracking amendments. A document matrix was handed out at the Lessons Learned Workshop.

MVA

Ms. Jan Hejl is working with the MVA to resolve an issue with people going to the polls with the impression that they were registered. It appears that the MVA may have to reevaluate their training process.

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ADMINISTRATOR'S UPDATE (continued)

NEW PARTY PETITION

The Constitutional Party's petition to be recognized as an official party was going out to the counties today. The party delivered the petition to SBE right before the Primary Election and had been informed that the petition would not be processed until after the Election.

BOARD OF STATE CANVASSERS

The Board of State Canvassers (the Comptroller, the Treasurer, the Clerk of the Court, the Attorney General, and the Secretary of the State) is scheduled to meet on April 6th to officially certify the Election. Ms. Lamone will be able to release the voting equipment after the certification and after the time for recount has expired.

LITIGATION

On April 2nd, the Court of Appeals is hearing the case to allow unaffiliated voters to vote for circuit court judges in the Primaries.

MR. DAVID HELLER

Mr. David Heller is leaving this week as Project Manager for the Voting System. SBE is working with DBM to recruit a replacement. Russ Douplik will be assisting with the contract requirements. Mr. Heller and the Accenture staff have had several knowledge-sharing sessions in preparation for Mr. Heller's departure. Mr. Burger extended the Board's thanks to Mr. Heller for his work and effort with the voting system project.

SBE WEBSITE

Ms. Widerman noted that the SBE website had not been updated with the date of today's Board meeting. Ms. Duncan and Ms. Wagner said that this was an oversight due to personnel change and would be corrected for future meetings.

ASSISTANT ATTORNEY GENERAL'S REPORT

Ms. Arnold had given prior notice that she would not be at today's meeting to submit a report. Ms. Lamone noted that Ms. Arnold had been very occupied with legal briefs for the Green Party case and the unaffiliated voters case. In response to Mr. Burger's question about the Libertarian Party, Ms. Lamone said that she has signed a settlement agreement.

LETTER FROM MR. JOE COLLINS JR.

Mr. Burger provided a brief summary of the situation. Mr. Collins is claiming that on September 9, 2003 (the Baltimore City Mayoral Primary Election), there were five precincts in the 10th district that did not open the polls until 11 a.m. due to the late arrival of the Democratic judges. Mr. Collins was in the primary race for Baltimore City Council. Since the five precincts in question compose 25% of his district, Mr. Collins is challenging the election results and had requested Baltimore City's Board of Elections to investigate the situation, provide an

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LETTER FROM MR. JOE COLLINS JR. (continued)

explanation, and give assurance that this will not happen again. According to Mr. Collins, when he did not receive a response from Baltimore City's Board of Elections, he then requested the involvement of the State Board of Elections. Mr. Burger said that a follow-up was necessary and that it was important to have a process in place to ensure that the polls open on time. Mr. Burger requested that he be kept updated on the situation.

HAVA ADMINISTRATIVE COMPLAINT PROCEDURE FORM

Ms. Trella submitted a complaint procedure form for the Board's approval. Ms. Trella explained that HAVA mandated an administrative complaint process for any violation of Title III. This form, with attached instructions, was designed to simplify the complaint process. Mr. Burger requested the staff to provide the Board with regular reports of administrative complaints and related follow-ups. Mr. Burger wants to ensure that the Board is aware of any complaints, especially those that may indicate a systemic problem in the implementation of HAVA requirements.

Ms. Widerman requested clarification of the Board's involvement in the hearing process mentioned on the form. Mr. Burger indicated that the State Administrator has the authority to be the hearing officer or to designate someone else as the hearing officer.

Ms. Widerman moved to accept the form and the related instructions. Ms. Beck seconded the motion. The motion was passed unanimously.

WAIVER REQUESTS

Ms. Beck moved to accept the recommendations submitted by Mr. Goldstein and Ms. Harris. Ms. Widerman seconded the motion to accept the recommendations for further discussion.

Friends of Larry Jarboe: After Mr. Goldstein and Ms. Harris confirmed that a person is allowed to close a campaign account after he or she wins an election, the Board agreed with the recommendation to grant a waiver request to the Friends of Larry Jarboe account.

Voices: Ms. Widerman agreed with the recommendation to grant a waiver request to the Voices account, but had concerns with an apparent ongoing problem due to repeated requests for waivers. Ms. Widerman asked if there was a process to recommend that a different person take over responsibility for the account. Ms. Harris said that the waiver could be conditioned on replacement of the person managing the account. Mr. Burger agreed that there have been too many waivers and fees and too much staff time and paperwork expended on this one account and stated that he was inclined to either deny the request for a waiver or give them a conditional waiver. Ms. Beck suggested that the request be granted, but that the account be flagged. After further discussion, Mr. Burger said that the Board all seemed to be in agreement that the account holders should be told to either close the account or replace the Treasurer. Mr. Goldstein

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WAIVER REQUESTS (continued)

informed the Board that waivers have been granted to other accounts in the past with similar conditions.

Mr. Burger explained to Mr. Menikheim that the Board is very serious about overseeing campaign finance regulations and that there is a waiver request program for late report filing fees. Mr. Burger noted that the campaign finance division at SBE does an excellent job of managing approximately 1500 campaign accounts.

Mr. Burger made a motion to accept the amendments. Ms. Widerman seconded the motion. The amendments were unanimously accepted.

OLD BUSINESS

SBE TELEPHONE SYSTEM

Ms. Beck was concerned that the telephone answering procedure at the SBE office came across as disconnected from reality and dismissive to a new caller who may not know the correct extension number to enter. Ms. Wagner agreed that the message was lengthy, but that the recorded reminders of deadlines have been helpful to many callers. Ms. Wagner assured Ms. Beck that a caller could be connected to a person if the caller does not know an extension number. Ms. Beck again voiced her concerns for first-time callers unfamiliar with the system. Ms. Lamone suggested that the staff listen to the message for evaluation. Mr. Burger recognized the value of the message's content, but understood Ms. Beck's concerns. He noted that callers have the ability to dial directly to extensions without listening to the entire message. The Board agreed that crafting a message to suit all potential callers was a difficult task.

NEW BUSINESS

ELECTION JUDGE RECRUITMENT

Mr. Burger praised Prince George's County for its innovative efforts with Election Judge Recruitment. Mr. Burger noted that recruitment and retention of election judges is an ongoing problem and that effective ideas should be shared, so that all counties may benefit and use for their needs as appropriate. Mr. Burger described the success of Prince George's County's recruitment of high school students. Mr. Burger also noted that Prince George's County, with a six-to-one ratio of Democrats to Republicans on its registry, had made a significant and successful effort to contact all registered Republican voters to recruit enough election judges to meet the one-to-one ratio requirement. Mr. Burger has drafted a letter for the counties to consider implementing these successful initiatives. Ms. Widerman agreed that Prince George's County was to be congratulated and said that the County's brochure for high school students was wonderful. Ms. Downs informed the Board that several of the student election judges had been filmed for a video to be used in future high school recruitment efforts. Ms. Beck commented that the County's efforts were innovative.

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NEW BUSINESS (continued)

MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

Mr. Burger informed the Board and staff members that the Governor had received recommendations to overhaul and strengthen the MBE program. Mr. Burger requested Mr. Torre to provide, at future Board meetings, updates on SBE's efforts to meet the goals of the MBE program.

SCHEDULING OF APRIL MEETING

The next meeting of the State Board will be held on Monday, April 26, 2004, at 1:30 p.m.

ADJOURNMENT

On a motion by Ms. Beck, seconded by Ms. Widerman, the meeting adjourned at 3:22 p.m.

Gilles W. Burger, Chairman