

AUGUST 30, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman  
Joan Beck, Member  
A. Susan Widerman, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Mark Davis, Assistant Attorney General  
Donna Duncan, Director of Elections Management  
Jared DeMarinis, Director of the Candidacy and Campaign Finance Division  
Jessica Jordan, Budget and Personnel Director  
Nikki Trella, Election Reform Director  
Mary Wagner, Director of Voter Registration and Petitions  
John Clark, MDVoters Project Manager  
Michael Kortum, CIO  
Mary Dewar, Election Reform Division

Also Present: Delegate Don Dwyer, District 31  
Tom Fleckenstein  
Walt Geggis, Queen Anne's County  
Alisha Alexander, Prince George's County  
Margaret Jurgengen, Montgomery County  
Bobbie Mack  
Pat O'Hara

**DECLARATION OF QUORUM PRESENT**

After establishing the presence of a quorum, Chairman Burger called the meeting to order at 1:34 p.m.

**APPROVAL OF MINUTES OF MEETING OF JULY 12, 2005**

Mr. Burger made a motion to approve the minutes from the July 12, 2005 meeting. Ms. Beck seconded the motion and the minutes of the July 12, 2005 meeting were approved. Mr. Burger complimented staff on the fine quality of the minutes.

**ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

**ADMINISTRATOR'S UPDATE**

Ms. Lamone presented to the Board her monthly report.

**1. Announcements**

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### **Introduction**

Ms. Lamone announced that Michael G. Kortum has joined SBE as the new CIO, replacing Pam Woodside who retired in June. Mr. Kortum is a twenty-seven year US Navy veteran. In addition to serving in over 42 countries around the world, Mr. Kortum's last four assignments were with major staff commands from Newport, Rhode Island to Corpus Christi, Texas where he served as Information & Security Officer, Electronics Material Officer (CIO), Combat Systems Officer as well as Training and Safety Officer. Since leaving the Navy, Mr. Kortum has worked for Anteon and Phillips International, Inc as Program Manager for IT, Security and Production. He has additional lead consulting experience on a wide range of IT programs.

Chairman Burger welcomed him aboard.

### **Babies**

Ms. Lamone also announced that Jaimie Jacobs delivered baby Nicholas Collins on August 6, 2005 at 6:19 PM. He was born weighing 8.2 lb and 20.8 inches in length. Natasha Walker delivered baby Addison Mae on August 12, 2005 at 9:12 PM. She was born weighing 6.12lbs. Both moms and babies are doing great!

Chairman Burger said that was great news.

## **2. Meetings**

### **Security Briefing for Virginia Legislative Committee**

On July 19, Ms. Lamone stated that she traveled to Richmond for the day in order to provide a briefing for a Virginia Legislative Committee with oversight of election issues. The subject of the briefing was the voting system security procedures established in Maryland. Because of the hard work we have done over the past several years, Maryland is definitely a leader on this issue and is recognized nationally. Many states are first beginning to see the importance of a robust security plan.

### National Association of Secretaries of State

Ms. Lamone gave the Board an attached synopsis of the conference..

### EAC Public Hearing

Ms. Lamone reported that on July 28, she attended an EAC public hearing on the proposed voting system guidelines. Her response to the proposed guidelines focused on the fact that the guidelines need to instill public confidence, remain technology neutral, encourage accessibility, and be based on facts. Additionally, she spoke about the proposed study of vote verification systems that Maryland is undertaking. There has been a lot of national interest in this type of study.

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### **Senate Briefing**

Ms. Lamone reported that she was asked by Senator Roy Dyson to brief the Educational Health and Environmental Affairs elections sub-committee on election related issues and answer questions. The briefing took place on August 2 and primarily addressed the proposed study.

### **NASED Conference**

Ms. Lamone gave the Board a synopsis of the conference.

### **Maryland Association of Counties**

Ms. Lamone reported that on August 19, she took part in a seminar during the Maryland Association of Counties (MACO) Annual Convention on "Bettering the Ballot Box - The Road Ahead for Maryland Elections." The seminar included Ms. Lamone, Brian Hancock of the EAC, and Pat Matsko, Vice President of MAEO. They presented a brief overview of recent election reform issues, an update on current projects, and a reminder that the election process is much more than a one-day event. They also encouraged the counties to continue to support their local board offices, provide administrative leave for county personnel who serve as election judges, and fund the needed county IT positions.

## **3. Help America Vote Act**

### *New U.S. Election Assistance Commissioner*

Ms. Lamone informed the Board that former Colorado Secretary of State Donetta Davidson was recently appointed and confirmed as the newest U.S. Election Assistance Commissioner. In addition to serving as the Chief Election Official of Colorado, Commissioner Davidson is a former local election official and will contribute direct election experience to the work of the U.S. Election Assistance Commission (EAC).

### *Voter Registration System Guidance*

Ms. Lamone reported that the EAC issued its "Voluntary Guidance on Implementation of Statewide Voter Registration Lists" at the end of July. The EAC was mandated by the Help America Vote Act to issue voluntary guidance to assist states in implementing the statewide voter registration list. The guidance is available on the EAC's website at [www.eac.gov](http://www.eac.gov).

### *EAC Advisory 2005-04*

Ms. Lamone informed the Board that last month the EAC issued Advisory 2005-04, which assists states in determining whether a voting system is compliant with the voting system requirements established by the Help America Vote Act. A copy of the advisory is attached to this report.

Chairman Burger asked Ms. Lamone if a gap exists between the standards. Ms. Lamone replied that no gaps or issues are present and there are no areas where Maryland does not comply.

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#### **4. Voting System**

##### Voting System Implementation – Phase III (Baltimore City and enhanced services)

Ms. Lamone reported that DESI and SBE have agreed to the contract modifications for Phase III of the Voting System Implementation Plan. The contract modifications will be presented to the Board of Public Works (BPW) on Wednesday, August 31 for review and final approval.

Chairman Burger asked if there was any reason to believe the contract will not be approved. Ms. Lamone stated that she knows of no reason why BPW would not approve the contract.

##### **Phase I – Equipment Refresh**

Ms. Lamone stated the Technology Refresh is on schedule for Phase I. As of August 18, 2005, DESI has refreshed over 1000 voting units from Montgomery County. The remainder of the voting units will be processed and delivered back to Montgomery County on or about the end of October. The voting system team has finished programming memory cards for acceptance/IV&V testing.

##### **IV&V MOU**

Ms. Lamone reported that staff is working with RESI (Research Economic Study Institute), an agency of Towson University, to obtain Independent Verification and Validation (IV&V) services. The voting system team is clarifying the IV&V processes and enhancing the documentation to make this a repeatable process.

Chairman Burger asked if the Memorandum of Understanding (MOU) is between SBE and RESI. Ms. Lamone answered yes, and the Assistant Attorneys General for both agencies has signed off on the MOU.

##### **Voting Unit Delivery Cart Casters**

Ms. Lamone notified the Board that the SBE voting system team, DESI and the cart manufacturer have completed the cart caster brake replacement effort.

##### **Master Schedule**

Ms. Lamone informed the Board that the SBE voting system team and DESI have been working with EDS to develop a baseline schedule for the voting system that includes the Phase III implementation and Phase I and II continuing operations and maintenance. Once the baseline is formed and a Master Schedule is developed, the team will review the Master Schedule with the local boards.

##### **Audio Ballot Project**

Ms. Lamone stated that the evaluation of the audio ballot prototype is scheduled for August 31, 2005 and will be hosted by the National Federation of the Blind. Seven blind voters

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will participate in the evaluation and provide feedback on the usability of the audio ballot prototype. The prototype incorporates some of the recommendations made by the Audio Ballot Focus Group last year. The focus group's remaining recommendations – most of which require software development and federal certification to implement – are being considered by Diebold.

Chairman Burger wanted to know who put the prototype together. Ms. Lamone answered that Diebold and Paul Aumayr on the SBE staff designed the prototype.

### **Vote Verification Study**

Ms. Lamone reported that the memorandum of understanding with the University of Maryland, Baltimore County has been signed as well as the memorandum of understanding with the University of Maryland, College Park. The institutions will begin work immediately, with their final report due in early January 2006.

## **5. Candidacy and Campaign Finance**

### **Candidate Filings**

Ms. Lamone reported that as of August 23<sup>rd</sup>, 31 candidates have officially filed for office at SBE.

### **Disclosure Form**

Ms. Lamone informed the Board that the semi-annual Contribution Disclosure Form was due on August 5, 2005. This form is required by either a person who does business with the State involving consideration of \$100,000 or more and makes campaign contributions of \$500 or more or a person who provides lobbyist compensation and makes campaign contribution greater than \$500. The Candidacy and Campaign Finance Division received over 220 disclosure forms from qualifying persons.

Chairman Burger asked if the Candidacy and Campaign Finance Division received questions regarding the forms. Mr. DeMarinis answered yes especially about the triggering requirements. Ms. Lamone added it is a shame the reporting due date doesn't dovetail with other reporting periods.

### **Documentation**

Ms. Lamone stated that the Candidacy and Campaign Finance Division is pleased to announce reemergence of the Division's newsletter. Staff hopes that this will be an effective tool in disseminating information and updates to the candidates, chairmen, treasurers and the public about campaign finance laws and regulations.

Chairman Burger agreed that the newsletter will be effective and stated that he enjoyed the copy he received.

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In addition, Ms. Lamone stated that Jared DeMarinis has completed a Supplement to the Summary Guide that makes corrections and updates to the Guide. Also, the Division has completed a new more comprehensive Users Manual for the ELECTrack software.

## **6. MDVOTERS Project**

### Project Delay

Ms. Lamone reported that on July 26, UAT training was halted to allow Saber to continue developing and customizing the Electus application to meet Maryland standards. The application is scheduled for delivery by close of business on August 29. During this time SBE staff and members of the UAT committee have monitored the development of the application through weekly meetings to review the progress and see the newly programmed parts of the application. As an additional measure, InfoSentry performed a full Quality Assurance review in Salem, Oregon on August 22 and 23. The final report is expected in September.

### **Schedule**

Ms. Lamone stated Saber submitted a revised Project Summary for Software Development & Delivery, Testing, Training and Statewide Rollout to reflect the changes to the implementation timeline. The schedule reflects a completed rollout by December 23, 2005.

### **Infrastructure**

Ms. Lamone informed the Board that progress has continued in other areas of the implementation. The build out of the production platform is complete at the primary VROC site in Annapolis and is near completion at the COOP site in Cumberland. Upon completion, testing will be performed in preparation for the pilot election. A tour of the VROC site in Annapolis was conducted for the Security and Technology committee.

### **Interface**

Ms. Lamone stated meetings have occurred to review the requirements for interfacing with the ELECTrak and the EMS application. MVA has committed to provide live access to the Driver License database for real-time validation of voters who provide a drivers license number on their VRA. A memorandum of understanding has been signed by SBE and Department of Health and Mental Hygiene laying out how death record information is to be transmitted to the SBE. Alan Craig of Computer Sciences Corporation has been working closely with the team.

### **Change Management**

The assessment of workflow processes captured during the local board visits is continuing. The information obtained will shape future business practices, as well as establish job definitions for each LBE.

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### **Data Migration**

Ms. Lamone reported that the task of accurately converting and migrating the data from the 24 LBEs into a single statewide MDVOTERS database is a critical element of the project implementation. Over the past several weeks, pilot counties have been working with Saber on extracting and cleaning their legacy system data. Starting on August 25 (with Carroll County), Saber will hold information and training sessions with each of the Pilot LBEs on the data conversion process and reports they will use to validate the accuracy and completeness of their data migration. At the time of the statewide rollout of LBEs to the new system, Saber will provide a document for signature that requires both Saber and each LBE Election Director to approve the data migration to the production database.

Ms. Lamone informed the Board that Carroll County was very happy with the data conversion process. Chairman Burger inquired about the company assisting Saber. Ms. Lamone stated that the company is CBS from Atlanta, GA.

Ms. Beck asked when the interface IV & V will happen. Ms. Trella said January 1, 2006. Chairman Burger followed by asking whether SBE needs a MOU with MVA. Ms. Lamone responded by stating that SBE already has one.

Chairman Burger concluded the Administrator's Report by commending the staff for its hard work.

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

Mr. Davis delivered his report on the current state of legal matters concerning the Board.

#### **Litigation**

*Schade v. SBE* (Cir. Ct. for Anne Arundel Co.)- Discovery is proceeding. SBE has responded to two document requests, producing 18,000 documents. Cross-motions to compel and for protective orders are pending as well as SBE's motion for summary judgment. Settlement discussions were held on August 23.

Chairman Burger inquired about the parties in the case. Mr. Davis replied that True Vote is not a party and Diebold is.

*Nader for President 2004 v. SBE* (Court of Special Appeals)- Stay was granted to await written opinion of Court of Appeals in *Nader* case and Court of Special Appeals' decision in *Green Party* fee case. Appellant's brief are due December 30.

*Maryland Green Party v. Maryland Board of Elections* (Court of Special Appeals)- This matter involves an effort to obtain attorneys' fee of at least \$338,000. Argument scheduled for September 12.

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*Hufnagel v. State Board of Elections* (Circ. Ct. for Anne Arundel Co.)- This is another follow-up case to *Maryland Green Party v. Maryland Board of Elections*, in which plaintiffs sought damages and attorneys' fees related to the 2002 election. Parties continue to negotiate terms of settlement agreed to on June 23. Court report is due on September 2 and status conference set for September 9.

Chairman Burger asked what are the issues involved in the lawsuit. Mr. Davis answered the matter is about the exclusion of the Green Party and further discussion would be held in closed session.

*Fox* administrative challenge to DBM's refusal to disclose unredacted SAIC report-hearing held on July 21, 2005 with a decision pending.

*St. John Baptist Church v. Howard County Bd. of Elections* (Cir. Ct. for Howard Co.)- SBE was dismissed as a party pursuant to stipulation.

**Contracts**

Mr. Davis informed the Board he reviewed Diebold contract modifications, SABER cure letters and EDS contract dispute and demand letters

**Miscellaneous**

Mr. Davis stated he drafted an opinion in response to request of Howard and Montgomery County Election Boards for an opinion on applicability of SBE's directive and circuit court judge's order in *Green Party* case. He assisted in preparation of SBE's responses to two document requests in *Schade*. He met with Montgomery County Board's attorney and Maryland Dept. of Planning on legislative district line question. Mr. Davis advised campaign finance staff on: authority lines, ballot issue committees, candidate names, statement of organization, transfer limits, use of campaign funds, employee payroll deductions, electronic checks and the Supplement to the Campaign Finance Guide.

Mr. Davis informed the Board he reviewed Memoranda of Understanding with Dept. of Health and Mental Hygiene regarding death data and with Univ. of Maryland, Baltimore County regarding vote verification study. He reviewed and edited guide for election petition candidates. Also, reviewed and advised on Del. Smigiel's Public Information Act request and advised on confidentiality of voter registration information.

Chairman Burger noted he appreciates the challenge of a new attorney coming to SBE and feels the Board is well represented.

**REGULATIONS**

Ms. Trella referenced the memorandum she distributed summarizing the proposed changes and the proposed regulations. Chairman Burger made a motion to adopt the proposed regulations, and Ms. Wideman seconded the motion. The motion passed unanimously.

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## **DEPARTMENTAL LEGISLATION**

Mr. Goldstein provided an overview of the memorandum of proposed departmental legislation provided to the Board in advance of the meeting.

The first proposal is a bill that was filed the previous year in response to the Court of Appeals ruling in *Maryland Green Party v. Maryland Board of Elections*. Chairman Burger asked why the bill didn't pass. Ms. Duncan explained that it simply ran out of time at the end of session. Mr. Goldstein noted that the bill provides candidate-filing procedures for non-principal party candidates. Chairman Burger asked whether a non-principal party has to file with SBE. Mr. Goldstein replied yes. In addition, in order to ensure uniform certification procedures for local ballot questions, the bill removes the above language that authorizes counties to adopt different certification procedures.

The second proposal addresses protecting a voter's confidential information. Currently, upon the request of a voter, an election board may make the voter's residence address and telephone number (as contained in a registration record or certificate of candidacy) confidential. Once confidentiality is granted, election offices are required to make every effort to ensure the security of the personal information. One area where this is currently not possible is the requirement to list residence address for all voters on the precinct register and have all voters verify that information on Election Day. Since the verification process is subject to public observation and the precinct register is released to the public following Election Day, the listing and verification of personal information creates a highly insecure situation for voters who require their personal information be kept confidential. Accordingly, this bill creates an exception to the requirement to list a voter's residence address on the precinct register and verify that address with the voter on Election Day if the voter's personal information has been deemed confidential by an election board.

Chairman Burger raised a concern that without the residence address, an election judge would not be able to properly confirm the identity of the voter. Mr. Goldstein responded that election judges could rely on name and date of birth.

Margaret Jurgenson was recognized by the Board and stated that she thought it would a better administrative practice to require confidential voters to vote at the election office or by absentee ballot. According to Ms. Jurgenson, this approach is consistent with the manner in which some other states address this issue. Ms. Beck expressed her agreement with Ms. Jurgenson and noted that this approach was necessary to confirm identity. Ms. Beck believes the number of confidential voters is not a large number and because they want to be treated differently, we should have the ability to treat them differently. Mr. Goldstein expressed his opinion that voters who need confidentiality should not have to give up their right to vote in the precinct. Chairman Burger agreed, but felt some form of confirmation was necessary. Ms. Beck also noted that she did not want to create any additional burden on election judges and felt since a special exception was being made for

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the confidential voters, it was not asking too much for them to vote at the election office. Ms. Widerman suggested the use of a PIN assigned to the voter. Mr. Goldstein expressed to the Board the need to establish a uniform system and not print any confidential information. Chairman Burger reiterated his desire to seek a method that would maintain confidentiality, allow the voters to vote in the precinct, and ensure a meaningful confirmation of the voter's identity.

The third proposal makes non-substantive procedural changes to voter registration provisions. The bill provides that a federal write-in absentee ballot (FWAB) may also serve as the individual's voter registration application. The bill also provides that a local board may remove a voter from the voter registry if the board determines, through the challenge process, that the voter is not eligible to remain registered. Next, the bill provides that an election director may remove a voter from the inactive voter list upon receipt of an absentee ballot application from that voter. Finally, the bill clarifies that the established challenge procedures may be used to challenge a currently registered voter whose eligibility to remain registered is in question.

The fourth proposal establishes several non-substantive procedural changes to the absentee ballot laws. First, the bill clarifies that the State Board prescribes the absentee ballot application. Second, the bill clarifies that the information that must be included on an informal request for an absentee ballot is the same information required on the formal application. Third, the bill clarifies that an absentee ballot can simply be given to a voter as opposed to only being "sent" to the voter. This change is being made to accommodate the voter who fills out his or her absentee ballot application at the local election office and wants to vote the ballot while he or she is there. Finally, the bill eliminates the specificity in the statute regarding the absentee ballot envelopes and instead provides that the State Board will provide regulations on the use of these envelopes. This will allow the State Board to develop regulations that reflect current procedures (including the fact that no jurisdiction uses three envelopes).

Chairman Burger stated that he liked this proposal.

The fifth proposal was made at the suggestion by the local board attorneys during their MAEO break out session. The bill provides that the purpose of the signature verification process is to ensure that the name on the petition is the name of a registered voter. This clarification is consistent with current administrative practice (and regulations), which is to confirm that each name on a petition corresponds to a registered voter. Current practice does not include an actual comparison of the signature on the petition to the signature on file with the voter registration record. Mr. Davis stated to the Board that he was present at this meeting.

The sixth proposal corrects a drafting error in the law. It had been a long standing administrative practice to only require ballot issue committees to file general election related reports (i.e. the pre and post general election reports). When the code revision was

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done, this practice was codified, but incorrectly. Instead of excusing ballot issue committees from primary election related reports, the law currently excuses them from all but the post general election report. This bill corrects the error by making ballot issue committees responsible for a pre-general election report and a post general election report.

The seventh proposal enacts a new federal requirement for states to hold a special election within 49 days of a declaration by the Speaker of the House of Representatives that 100 vacancies in representation exist. This bill creates an exception to the normal vacancy process and provides that SBE will establish rules to govern this process.

The eighth proposal comes from the Attorney General's office in response to recent litigation with the Green Party. The proposal seeks to create more access for non-principal party voters to become election judges. Currently, a non-principal party voter can only be an election judge if there are six or more judges in the precinct. In no case can there be more non-principal party judges than Democrat or Republican judges. The proposed bill removes the requirement that there be six or more judges and provides that non-principal party judges may not exceed the total number of Democrat and Republican judges. The bill also provides that a precinct of less than 200 voters may be staffed by two election judges unless there is a third individual who is a non-principal party voter who wants to serve in that precinct.

Chairman Burger asked what are the current guidelines and whether this proposal would make recruitment of judges more difficult. Mr. Goldstein stated there are no guidelines for the number of judges, generally 4 judges and 2 if less than 200 voters and that he did not think the bill would make recruitment more difficult but would provide more opportunities for other people to serve. Mr. Davis informed the Board that he had additional legal advice regarding this bill that he wanted to discuss during the closed session. Chairman Burger withheld comment until the closed session.

Mr. Goldstein then explained that the next three proposals were from HB 642, which was filed last year by Delegates Barkley and Bates based on a report submitted by SBE outlining late filing issues and possible remedies. Mr. Goldstein reported that Delegate Barkley expressed his continuing support for the bills, but had requested that the Board introduce them as departmental legislation. Staff is proposing to break last year's bill into three separate bills since some of the measures are more controversial.

The first bill (proposal 9) will make all campaign finance entities continuing committees. This will cause all committees to have to file with the State Board of Elections. This has the advantage of increased uniformity, elimination of an unwanted responsibility from the local boards, and ensuring all campaign reports are filed electronically (unless a waiver is obtained). The other proposed change would be to require committees to designate an election year in which they intend to participate. The committee would then only be responsible for election-related reports in the designated election year.

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This next bill (proposal 10) allows the State Prosecutor to refer collection of late fees to the Central Collection Unit under the Department of Budget and Management. The bill also prohibits an individual signing a report on behalf of another individual.

The final bill (proposal 11) provides that a candidate assumes certain liabilities for the conduct of his or her authorized campaign committee. Specifically, if the candidate committee owes a campaign finance report or has outstanding late fees, the candidate may not file for office or assume office until the deficiencies are rectified. Chairman Burger asked if this proposal makes liability equal between the candidate, the chairman and treasurer. Mr. Goldstein answered yes.

The twelfth and final proposal requires all voters to provide identification at the polls. The bill specifies the types of identification and allows a voter who does not have identification to vote a provisional ballot. This bill has been submitted either as departmental legislation or by private sponsor for several years and has not met with any success. Ms. Lamone noted that it was her recommendation that the Board not submit this proposal.

Chairman Burger then made a motion for the Board to refer all of the proposals, except the second and seventh proposals, to the Governor as departmental legislation. The motion was seconded by Ms. Beck, and unanimously approved.

## **BIENNIAL CONFERENCE AGENDA**

Ms. Duncan presented to the Board a proposed meeting agenda and menu. She noted that the proposed agenda includes topics suggested by local boards, a voter registration system briefing, a security briefing to continue our training program as required by our risk assessment report, and time to hear from the EAC. This agenda also accommodates the majority responses from the county attorneys asking that a roundtable discussion be held on Monday and that the allotted time be extended. Ms. Duncan asked the Board to provide her with biographical information, a welcome statement to include with the meeting material and any input on either the agenda or menu. She also advised that the proposal could change due to speakers' availability, but if approved, the proposals they would be forwarded to the local boards. The Board approved the proposed items and asked that they receive regular updates on the meeting.

## **OLD BUSINESS**

There was no old business.

## **NEW BUSINESS**

There was no new business.

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**SCHEDULING OF JULY MEETING**

The next meeting of the State Board will be held on October 18, at the biennial meeting.

**CLOSED SESSION**

Chairman Burger motioned the SBE vote to hold a closed session in order to consult with staff and counsel about several matter involving pending and potential litigation, an investigation proceeding on actual or possible criminal conduct, a petition for a declaratory ruling, and budget recommendations. A closed session is permitted under State Government Article §10-508(a)(7), (8), (12) and (13).

**ADJOURNMENT**

After the ending the closed session, on a motion by Chairman Burger, seconded by Ms. Beck, the public meeting was adjourned at 4:32 p.m.

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Gilles W. Burger, Chairman