

APRIL 26, 2005
STATE BOARD MEETING
151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Susan Widerman, Member
Judy Arnold, Assistant Attorney General
Mark Davis, Assistant Attorney General
Linda Lamone, State Administrator
Mary Cramer Wagner, Voter Registration Director
Terry Harris, Deputy Director of Candidacy Campaign Finance Division
Nikki Trella, Election Reform Director
Joe Torre, Voting System Manager
Patrick Strauch, Project Manager
Tracy Agnew, Voter Registration Coordinator
Mary Dewar, Communications Director
Janey Hegarty, Administrative Support
John Clark, Voter Registration Project Manager
Jaimie Jacobs, Election Reform Deputy Director
Jessica Jordan, Budget Analyst

Also Present: Guy Harriman, Howard County
Betty Nordass, Howard County
Barbara Fisher, Anne Arundel County
Carole Streeting, Anne Arundel County
Patricia Matsko, Carroll County
Gail Carter, Carroll County
Dave Laning, Baltimore County
Joan Floyd, Baltimore City
Randy Cobena, Saber Consulting, Inc.
Al Davidson, Saber Consulting, Inc.
Darlene Meister, Saber Consulting, Inc.

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 MARCH 22, 2005

Chairman Burger stated he had forwarded corrections to SBE staff and those corrections were noted in the minutes. On a motion by Ms. Beck, seconded by Ms. Widerman, the minutes of the March 22, 2005 meeting were approved. Chairman Burger requested that an electronic copy of the minutes be forwarded to him. Ms. Nikki Trella responded she would forward them to him.

ADDITIONS TO THE AGENDA

None. Chairman Burger noted that the final adoption of the regulations was deferred to the next meeting.

ADMINISTRATOR'S UPDATE

INTRODUCTION OF GUESTS

Ms. Lamone introduced Mark Davis as the new Assistant Attorney General who will be replacing Judith Arnold upon her retirement in June. Ms. Lamone stated she and Mr. Davis had worked together some years ago. Ms. Lamone stated she is sorry to be losing Ms. Arnold, however she is pleased that someone of Mr. Davis' quality is coming on board. On behalf of the Board, Chairman Burger welcomed Mr. Davis. Chairman Burger stated he had the privilege of meeting with Mr. Davis last week and understands that he teaches classes as well. Mr. Davis responded that he teaches classes at the University of Baltimore Law School. Mr. Burger inquired as to what kind of classes Mr. Davis teaches. Mr. Davis responded that this semester he taught "Elementary Legal Writing Skills" for first year students and last semester it was "Trail Advocacy" for second year students. Chairman Burger also thanked Ms. Arnold for her service to SBE.

Ms. Lamone introduced Saber's Maryland team members: Mr. Randy Cobena, Ms. Darlene Meister and Mr. Al Davidson. Saber Consulting, Inc. has been awarded the contract to implement the MDVOTERS statewide Voter Registration System. Ms. Meister and Mr. Davidson echoed Mr. Cobena's enthusiasm for implementing the MDVOTER's system in Maryland. Chairman Burger welcomed Saber's Maryland team.

NASED SPRING BOARD MEETING

Maryland hosted the NASED Board meeting on April 15 and 16 in Annapolis. In addition to the NASED members, New Mexico Secretary of State and NASS President, Rebecca Vigil-Giron attended the meeting.

CARTER-BAKER COMMISSION ON FEDERAL ELECTION REFORM

The first meeting of the Commission was held on April 18 at American University. Former President Jimmy Carter and former Secretary of State James Baker are co-chairs of the Commission. The Commission is staffed and sponsored by American University. Ms. Lamone reported that there is a public meeting on June 30, 2005. It is expected there will be one additional meeting, not open to the public, before the Commission issues a report in September recommending changes in federal law.

METRO WASHINGTON COUNCIL OF GOVERNMENTS (MWCOC) MEETING

Ms. Lamone reported that Ms. Mary Dewar attended the Metro Washington Council of Governments (MWCOC) meeting on April 15, 2005. Chairman Burger inquired as to whether MWCOC is more than just a group of election officials. Ms. Lamone responded MWCOC is a group of election officials from Virginia, Maryland and the District of Columbia, which meets quarterly to discuss issues common to the three jurisdictions. The State Board has not been regularly attending these meetings. Both Prince George's and Montgomery County Board of Elections have attended these meetings in the past and usually provide a brief report. With the implementation of the statewide voter registration system, the staff will become more involved. Chairman Burger stated that had he and his colleagues had more time, they would be very interested in becoming more involved. Ms. Lamone reported the next meeting is scheduled for June 24, 2005.

ELECTION CENTER WORKSHOP

Ms. Lamone reported that due to legislative conflicts, Ms. Pam Woodside on behalf of Ms. Lamone, attended the Election Center Workshop on Security in Philadelphia, PA on April 7, 2005. Ms. Woodside gave a briefing on Voting System Security. The presentation prompted many questions from the audience and was very well received. Ms. Lamone stated she has received follow up inquiries from other states. Ms. Woodside is working very closely with NIST to develop their standards and language for recommendations to the EAC.

LEGISLATION

Ms. Lamone stated that each member was supplied with a legislative tracking chart showing the status of all election-related legislation this agency tracked during the 2005 legislative session. Ms. Lamone stated we lost one of our Departmental Bill, affectionately called "Ross' Bill", HB 677. Chairman Burger inquired if this bill dealt with write-in votes for the primary elections and did it pass. Ms Lamone responded it did not. This legislation addressed the Green Party lawsuit to change the law to track the Court of Appeals' decision in the Green Party case. Chairman Burger inquired as to why this did not pass. Ms. Lamone stated it got caught in the final days of session. Chairman Burger asked if there are conflicts due to the fact Maryland law does not confirm with the Court of Appeals' decision. Ms. Lamone and Ms. Arnold confirmed that, although a conflict exists, we are following Maryland law, which is the court decision rather than the statute. Ms. Lamone highlighted the following legislative measures:

- SB 86/HB 897 – Rules of Interpretation – Computation of Age – clarifies that a person is a certain age on his/her birthday.
- SB 287 – Voters Rights Protection Act of 2005 – provides how a provisional ballot cast in the wrong precinct by a registered voter will be counted. Mr. Lamone stated that for the Board Members' convenience, Mr. Goldstein had provided a full analysis of this bill.
- SB 478 – Early Voting – provides for early voting to start the Tuesday before the election and continue through the Saturday before the election. Ms. Lamone stated she believes this bill may possibly be vetoed due to a mandatory funding provision.
- SB 700 – Election Judges – Minors – allows 17 year olds to work a full election day provided they have parental permission.
- SB 849/HB479 – Voting System Study - requires the State Administrator to study voting system verification technologies and report to the General Assembly by December 2005.
- HB 622 – Absentee Voting of Demand – removes the qualifications for voting by absentee ballot.
- HB 687 – Voter Registration Volunteers – Age Requirements – specifies that voter registration volunteers must be at least 18 years on or before the day of the next election. This parallels the voter registration law, therefore it does not provide the relief that Senator Greene's constituent was seeking. Chairman Burger inquired whether the legislature could have written similar language to SB 86 and HB 897. Ms. Lamone responded in the affirmative.

REFERENDA

Ms. Lamone reported that requests for advance sufficiency determination have been submitted and granted on four statewide referendum petitions. They are:

- SB 796 – Medical Decision Making Act of 2005
- HB 407 – Safe Schools Reporting Act of 2005
- HB 692 – Hate Crimes Penalties Act – Expanding Prohibitions and Protected Classes of People
- HB 1298 – Recordation and Transfer Taxes – Exemptions – Domestic Partners

Signatures of 51,185 registered voters in Maryland are required on each of the four petitions. For each petition, 1/3 of the required signatures must be filed by May 31, 2005, and the remaining must be filed by June 30, 2005. Chairman Burger asked if the required number is not met, then the questions do not appear on the ballot. Ms. Lamone answered in the affirmative.

PERSONNEL

Ms. Lamone reported that Barbara Jackson, Election Director in Baltimore City is retiring. She had decided to retire earlier this month, but, at the request of the Mayor's office, has postponed her retirement until June. This will allow for continuity during the hiring process. The Candidacy and Campaign Finance Director position is being nationally advertised. The closing dates are April 26th and 29th respectively.

It is not yet known who applied for the Baltimore City Election Director position as those applications go directly to the personnel division of Department of Budget and Management and have to be scored.

MUNICIPAL ELECTIONS

Ms. Lamone reported that Ms. Trella and Ms. Jacobs served as election judges for the City of Salisbury General Election on April 5th. Diebold's EZPoll book was used again and was very well received. Chairman Burger asked Ms. Trella if the judges liked the electronic pollbook to which she answered in the affirmative. He then asked if they were expensive and again she answered in the affirmative.

The City of Hampstead will be using the EZPoll book with the encoder option activated in its municipal election on May 10, 2005. Chairman Burger asked Ms. Trella to describe what was entailed with the encoder option activated. Ms. Trella responded that the Diebold handheld encoder currently programs the ballot. The EZPoll book includes a port where the voter access card is inserted and programmed with the proper ballot. This will be done as part of the check-in process. Mr. Torre stated this will end confusion in a primary election, where an election judge can program the wrong ballot. Chairman Burger inquired if any statistics on human error regarding encoding have been compiled. Mr. Torre replied there had not. Chairman Burger said it would be interesting to know for the future.

ELECTION DIRECTORS' MEETING

An Election Directors' meeting was held on Tuesday, March 29, 2005. The primary focus of the meeting was a presentation by Marcia Lausen, Program Director for Design for

Democracy. Ms. Lausen demonstrated the benefits of using graphic art design in election materials and instructions. A Request for Proposals for a graphic artist to assist with the content and redesign of the judges' manual has been issued. The responses are due April 27, 2005. Ms. Jacobs stated that to date, 1 proposal had been received.

HELP AMERICAN VOTE ACT

Ms. Lamone stated that Ms. Jacobs is working on all the disability grant reports that have to be submitted to the U.S. Department of Health and Human Services. Currently, we are assessing what improvements can be made for the 2006 elections and what the cost will be. Ms. Jacobs has been sending the draft reports to the Board Members. Chairman Burger stated the members should contact Ms. Jacobs by April 27, 2005, if they have any comments.

ELECTION JUDGES TRAINING

Ms. Lamone reported on the demonstration of an on-line election judge tutorial by HAVA Partners, on Monday, April 25, 2005. Ms. Lamone stated those in attendance felt the demonstration was very beneficial. Ms. Beck commented this would help to standardize the training process. She also stated with so many judges and replacing judges at the last minute, this would be a wonderful tool.

VOTER REGISTRATION

Ms. Lamone reported on the successful kick-off meeting for MDVOTERS on April 13, 2005, with more than 150 people attending. Attendees included local board staff, county IT personnel and county management personnel.

Ms. Lamone stated that SBE has obtained the services of InfoSENTRY to provide an independent review of MDVOTERS. They have done work for SBE before and are very familiar with the Saber product. Chairman Burger inquired as to what services InfoSENTRY is providing. Ms. Wagner responded they would be providing Risk Management, Quality Assurance and Independent Validation and Verification. Mr. Burger also asked on what other project did we use InfoSENTRY. Ms. Wagner responded that InfoSENTRY was used as the technical advisor during the RFP oral presentations process.

Ms. Lamone reported that Ms. Jordan has been working with the finance officers in the counties and has set up a list serve to maintain constant communication since we are partnering with them on multiple projects. Ms. Lamone believes this is the most efficient method to get the information directly to the finance officers. Ms. Beck stated she believes this will be beneficial to the counties.

VOTING SYSTEM

Ms. Lamone reported that the maintenance script and plan for the voting system has been distributed. The voting system has been released statewide. The counties are now doing their routine maintenance. The maintenance plan was piloted in Montgomery County and some minor changes were made as a result. Chairman Burger inquired as to whether Montgomery County supplied any feedback. Mr. Torre responded that Mr. Paul Auyumar went to Montgomery County to work with them and the maintenance plan. Montgomery County provided good information, and the plan was amended to reflect their input.

Ms. Lamone stated the voting system team is working extensively to implement Phase III of the voting system in Baltimore City. Currently, the team is finalizing the contract modifications, voter outreach plans, and training initiatives. The goal is to present the item to the Board of Public Works in June. Chairman Burger asked Mr. Torre if there are any red flags with which to be concerned. Mr. Torre replied that the same process used in Phase II and approved by the Department of Budget and Management is being used with Baltimore City. Mr. Torre reported there have been two meetings with the Baltimore City Board members. Mr. Torre explained the team will be attending the Baltimore City Board meetings to facilitate communications.

IT PROJECTS UPDATE

Ms. Lamone notified the members that Ms. Pam Woodside's IT information report was in the folders along with the report of web use.

It was reported that Mr. Kurt Snyder would be attending classes to learn Linux at the expense of Saber Consulting, Inc.

ASSISTANT ATTORNEY GENERAL'S UPDATE

SCHADE LITIGATION

Ms. Arnold stated the scheduling conference was held that morning, and the trial is scheduled for April 2006. Chairman Burger stated it was his impression that the Judge had made a ruling in this case. Ms. Arnold explained that, while some counts had been dismissed, others are still pending. The aim of litigation is to establish that it was an error for SBE to certify the Diebold system, and the Plaintiffs are seeking decertification of the system.

NADER FOR PRESIDENT 2004

Ms. Arnold explained that the appeal has been docketed in the Court of Special Appeals. This is an appeal from the Circuit Courts' order based on the failure to include attorney fees in the award.

MARYLAND GREEN PARTY

Ms. Arnold said that the Green Party is trying to obtain attorneys' fees in the amount of \$338,000. The appellants filed a brief in the Court of Special Appeals on March 28, 2005, and SBE's brief is due May 4, 2005. Arguments before the court will be scheduled in the fall.

LYMAN

Ms. Arnold stated this case was filed after the Sussman case, which challenged the inability of independent voters to participate in the primary for Judicial Circuit Court Judgeship. Anne Arundel County Circuit Court continued the stay by agreement until 15 days after close of 2005 General Assembly Session due to the fact there were a number of bills that would have addressed the issue. Since none of the bills passed, it will be up to Mr. Lyman whether the case will proceed.

HUFNAGEL

Ms. Arnold stated they are moving forward with the discovery phase of the case.

PUBLIC INFORMATION ACT REQUESTS

Chairman Burger inquired as to what TrueVote and The Baltimore Sun requested under the Freedom of Information Act. Ms. Arnold reported that Stephanie Desmon of The Baltimore Sun asked for a report on problems with the machines on election day. We had a report on this by county and there was not much information to provide. The reporter picked up the information on Monday. TrueVote requested a broad range of information under the State's Public Information Act. However, we have not yet heard from them after SBE provided a written response and identified the costs associated with complying with their request

WAIVER OF LATE FEES

Terry Harris indicated that 12 waivers had been mailed to the board. Ms. Widerman indicated that she had not received them. Chairman Burger asked Ms. Widerman if she would like to defer the waivers until she has the opportunity to review them, and Ms. Widerman replied no.

Ms. Harris presented the 12 waivers to the board.

1. Committee For Lih Young, A574 – The Board accepted the Administrator's recommendation and reduced the filing fee to \$250.00. Motion made by Chairman Burger, seconded by Ms. Beck. The motion passed unanimously.
2. Lih Young For Comptroller Committee, A1081 – The Board accepted the Administrator's recommendation and reduced the filing fee to \$250.00. Motion made by Chairman Burger, seconded by Ms. Beck. The motion passed unanimously.
3. Citizens To Elect Beau Oglesby, A1940 – The Board granted a full waiver of the entire \$500, rather the accepting the Administrator's recommendation to partially grant the waiver. Motion made by Ms. Beck, seconded by Chairman Burger. The motion passed unanimously.
4. Citizens To Elect Fred Davis, A860 – The Board accepted the Administrator's recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.
5. Friends of Jim Gilchrist, A 2602 – The Board accepted the Administrator's recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.
6. Citizens for Charles Cephas, A4227 – The Board accepted the Administrator's recommendation to grant the waiver, however without the recommended condition that the account must close. Motion made by Chairman Burger, seconded by Ms. Beck. The motion passed unanimously.
7. Mid-Atlantic Propane Gas Association PAC, A 3734 – The Board accepted the Administrator's recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.

8. Mid County Republicans PAC, A 4207 – The Board accepted the Administrator’s recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.
9. Together Everyone Achieves More PAC, A4030 – The Board accepted the Administrator’s recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.
10. South County Democratic Slate, A 4274 – The Board accepted the Administrator’s recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.
11. Friends of Amber Waller, A 4252 – The Board accepted the Administrator’s recommendation to grant the waiver. Motion made by Chairman Burger, seconded by Ms. Widerman. The motion passed unanimously.
12. Committee To Elect George F. Johnson, IV, A486 – The Board accepted the Administrator’s recommendation to deny the reconsideration request for a waiver. Motion made by Ms. Beck, seconded by Chairman Burger. The motion passed unanimously.

ADMINISTRATIVE CLOSURE OF CAMPAIGN FINANCE ENTITY

Ms. Harris submitted one campaign finance entity to be administratively closed by the Board. In response to a question, Ms. Harris noted that the State Prosecutor had deferred a court hearing in anticipation of the Board closing the entity at this meeting. Ms. Beck made a motion to close the entity, and Ms. Widerman seconded the motion. The motion passed unanimously.

CONFIDENTIALITY REQUESTS

In response to information sent to the State’s Judges, 117 judges have requested that we remove their home addresses and telephone numbers from the certificate of candidacy, voter registration lists, and other public documents. Ms. Beck agreed that the judges deserved to have their information be kept confidential. Ms. Harris explained that, upon receipt of the request, the personal information is immediately removed from public documents. Mr. Burger made a motion to accept the requests for confidentiality from the 117 judges, and Ms. Widerman seconded the motion. The motion passed unanimously.

OLD BUSINESS

Ms. Beck asked for the status on a report about the number of voters who voted more than once in the last election. Ms. Trella reported that staff will be collecting from the local boards information on the voters already identified as having voted more than once and will be gathering voter history data from the local boards to identify voters who voted more than once in different jurisdictions.

Chairman Burger reported that he had the privilege of speaking to Election Judges at Montgomery County’s Board of Election recognition dinner. Mr. Burger also spoke with Montgomery County’s Outreach Director Gilberto Zelaya’s views about protecting non-citizens (who don’t understand English) from inadvertently committing perjury by submitting voter registration applications without an understanding of the application

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criteria. Chairman Burger endorsed Mr. Zelaya's views and stated they would be working collaboratively to ensure that all naturalized citizens have the ability to register to vote and that SBE endeavor to prevent non-citizens from registering to vote whether intentionally or inadvertently. .

NEW BUSINESS

None.

SCHEDULING OF JUNE MEETING

The next meeting of the State Board will be held on Monday, June 13, 2005, at 1:30 p.m.

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CLOSED SESSION

Chairman Burger read the following statement, “State 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.” Chairman Burger then made a motion, seconded by Ms. Widerman, for a closed session. On a roll-call vote, members voted in the affirmative.

ADJOURNMENT

On a motion by Mr. Burger and seconded by Ms. Beck, the meeting was adjourned at 2:41 p.m.