

JUNE 20, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman  
Tom Fleckenstein, Vice Chairman  
Joan Beck, Member  
Bobbie Mack, Member  
A. Susan Widerman, Member  
Linda Lamone, State Administrator  
Ross Goldstein, Deputy Administrator  
Mark Davis, Assistant Attorney General  
Donna Duncan, Director Election Management  
Jared DeMarinis, Director of Candidacy and Campaign Finance  
Nikki Trella, Election Reform Director  
Mary Wagner, Director of Voter Registration and Petitions  
John Clark, MDVoters Project Manager  
Patrick Strauch, Voting Systems Project Manager  
Michael Kortum, CIO  
Jaimie Jacobs, Election Reform Deputy Director

Also Present: Gineen Beach, Governor's Office  
Carole Streeting, Anne Arundel County Board of Elections, Deputy Election Director  
Charlotte Rader, Anne Arundel County Board of Elections  
Margaret Jurgenson, Montgomery County Board of Elections Director  
Sara Harris, Montgomery County Board of Elections, Deputy Director  
Tracy Dickerson, Charles County Board of Elections Director  
Catherine Countiss, St. Mary's County Board of Elections Director  
Robert Ferraro, SafeVotingMD

**DECLARATION OF QUORUM PRESENT**

Mr. Burger called the meeting order at 1:38 p.m. and declared that there was a quorum.

**APPROVAL OF MINUTES OF MEETING OF MAY 23, 2006**

Ms. Beck made a motion to approve the minutes as amended, and Mr. Fleckenstein seconded the motion. During the discussion, additional changes to the minutes were proposed. Mr. Burger requested the following changes:

1. On page 1, remove the question marks after an attendee's first name.
2. On page 15, amend the last sentence of the third paragraph to read: Mr. Burger stated he had an issue with posting the number of people who voted and would like his thoughts taken into consideration when working on these procedures.
3. On page 18, remove three lines above "Scheduling of June Meeting."

Mr. Burger amended the motion to include the additional proposed changes, and Ms. Mack seconded the motion. The amended minutes of the May 23, 2006, board meeting were approved unanimously.

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A copy of the May 23, 2006, minutes of the closed meeting was distributed. After reviewing the minutes, Ms. Widerman made a motion to approve the closed meeting minutes, and Mr. Fleckenstein seconded the motion. The minutes of the May 23, 2006, closed board meeting were approved unanimously.

**ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

**ADMINISTRATOR'S UPDATE**

Ms. Lamone presented the Board with the Administrator's monthly report.

**Early Voting**

Early Voting Locations

The majority of LBEs have completed their site selections and that the early voting locations are almost ready to finalize. The final list will be provided to the State Board members, posted on the SBE website, and used in the outreach required by House Bill 1368.

Electronic Poll Books Phase 1

The contract for the electronic poll books was approved by the Board of Public Works on June 7<sup>th</sup>, and the contract was signed the following day after confirmation was received from the Department of Budget and Management that the funds would be released. The first step is for Diebold to identify a project manager and deliver a project management plan. Staff members have interviewed the proposed project manager and agreed to the proposed individual.

Electronic Poll Books Phase 2

Staff is working on developing a contract modification to the electronic poll book contract for the purchase of the remainder of the electronic poll books for use on election day. The goal is to submit the modification to the Board of Public Works by the end of July.

**Help America Vote Act**

Federal Accessibility Grant

The State was awarded \$176,000 for the FY 06 grant application to assure access for individuals with disabilities. This funding will be used to print a true/false Disability Awareness quiz for election judges and continue to purchase items to make polling places accessible for Election Day and pins for election judges.

Election Judges' Manual and Training

Distribution and review of the election judges' manual are on-going. Eleven local boards have submitted chapters for review. Each local board was able to customize certain portions of the manual. The remaining chapters – Chief Judges and Check In Judges – are being developed and will include set-up and check-in procedures with the electronic pollbooks. These chapters and the training could not be finalized until the contract for electronic pollbooks was approved.

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Voter Outreach

Mary Dewar demonstrated the voting unit at the World of Possibilities Expo, a statewide event for individuals with disabilities, and a voter registration event at the League of People with Disabilities. Ms. Dewar continues to work with Diebold on the Phase III voter outreach activities, including review of the two Phase III commercials and managing voter outreach events and planning for Baltimore City, and planning the public education required by House Bill 1368 to inform the public about early voting.

At 1:47 p.m., Mr. Burger adjourned the meeting to allow the transcriber to set up his equipment. Mr. Burger reconvened the meeting at 2:01 p.m.

Voter Registration Volunteers

To educate already trained voter registration volunteers about the new requirements, staff developed a newsletter for existing voter registration volunteers. This newsletter will be mailed by this office and the local boards to those individuals who were trained as voter registration volunteers since June 2002. A copy of the newsletter was included in each board member's folder.

**Voter Registration and MDVOTERS**

Saber Site Visit

Michael Kortum conducted a headquarters site visit to Saber Corp. on June 7-11. During the visit, the primary objective was a security review that included a SAS 70 overview and preliminary key point assessment. Additional objectives included SBE equipment validation, personnel and equipment resource usage, and help desk process review.

The results of the security review revealed Saber to be in compliance with all major aspects of the SAS 70 requirements. As added precautions Saber will adopt even more detailed record keeping and reporting. Although it is expected that Saber would satisfactorily complete a SAS 70 audit at this time, the actual audit process would be far too labor intensive to conduct until after the 2006 election (due to the current need to meet the deadlines of the continued development and application tuning).

In response to a question from Mr. Burger about what a SAS-70 audit is, Mr. Clark stated that a SAS-70 audit assesses the public accounting professional standards for software development and other IT companies.

Software Releases

Saber issued a software release for MDVOTERS on May 26. The new version addresses the areas of election worker management, absentee voters, petition processing, and management reports. Two key reports, the Monthly Statistical Report and the NVRA statistics report, do not function properly. These reports are needed for local boards to stop dual data entry into their legacy system and MDVOTERS. Saber has been notified that the reports must be corrected as a top priority, and Saber has set a date for retesting of corrected reports, starting Friday, June 16.

Saber will issue another software release for testing by SBE the week of June 19. This release will include interfaces with the Maryland Judicial Information System (to remove persons convicted of

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infamous crimes from the registration list) and the State Vital Statistics Division database in DHMH (to remove deceased persons from the voter list).

Geographic Information System (GIS) Interface for Montgomery County Street File Maintenance

Mr. Clark reported that the GIS interface is operational as designed according to the agreed upon specifications and that the re-synching of the data is complete. After the first update, Montgomery County Board of Elections and Saber were instructed to work together for the next couple upgrades. A representative of Saber will be on site this week to assist the Montgomery County Board of Elections with any issues that arise. Mr. Burger asked whether this was a one-time process and whether it would be beneficial for Montgomery County Board of Elections to know how to perform this function independently. Mr. Clark responded that this is a repeatable process and that the Saber representative is there to assist if there are any issues.

Change Control Board

Earlier this year, MAEO formed a special Voter Registration System Committee to identify areas of MDVOTERS most needing attention prior to the elections. Working from lists of problems reported to the Saber Help Desk, the MAEO Committee prioritized the most critical items and forwarded the list to the MDVOTERS Change Control Board (CCB) Chairman (John Clark) for action. Working over a period of four days, members of the CCB and MAEO reviewed each item in detail and identified to Saber which issues are critical for the election. Several Help Desk items were closed during the review, since it was determined that they had already been corrected by Saber. The review process proved very productive, once again showing the value of local participation in the continuing development of the statewide system. In particular, the time and commitment of MAEO President Guy Mickley, SBE's Stacey Johnson, Gail Carter (Carroll), Sandi Logan (Caroline), Val Patterson (Wicomico), Stan Haramoto (Somerset), and Brittani Thomas (Queen Anne's) are appreciated.

Petition Processing

Another first was recorded in June as SBE and LBE users processed the first statewide petition, using MDVOTERS to validate the registration of voters who signed the petition pages. During this first petition processing, a number of issues and business process improvements were identified. Terry Meyers (Baltimore City) provided valuable details on ways to improve petition processing. These have been submitted to Saber.

Ms. Lamone reported that, as of 1:30 p.m. on the day of the meeting, House Bill 1368 (2006 Legislative Session) had 17,238 valid signatures and Senate Bill 478 (2005 Legislative Session) has 16,924 valid signatures. As of that time, Ms. Lamone noted that Senate Bill 287 had not met the threshold.

Security Testing

ISMART has received the small procurement contract to conduct penetration and intrusion testing of the MDVOTERS system beginning in June, under the direction of Michael Kortum and SBE Chief Information System Security Officer, Larry Grim. The contract has three key deliverables: a security test plan; the actual testing; and a test report with recommendations.

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**Voting Systems**

Upgrade and Testing

The voting system team upgraded and performed sample testing on the Montgomery County voting units used in the school board election. This completes the statewide software upgrade effort on the voting systems.

Questionnaire

The voting system team is compiling the responses to the LBE questionnaire survey. The results of this survey will drive the supply orders and support services for each county including the technical training requirements for the voting system.

Phase III Update

Baltimore City has completed their technical training including the Optical Scan training. Baltimore City conducted a mock election using 3 precincts (Local Board office, St. Leo's church, and Mondawmin Mall). The mock election was held the week of June 12<sup>th</sup>. The mock election experience walks the LBE staff through the entire election process from Ballot Production to Logic and Accuracy through Election Day and Canvass processes. Mr. Burger asked if there were any lessons learned from the mock election, to which Mr. Strauch responded that the Baltimore City Board of Elections did well and identified some additional wiring that is needed. Mr. Strauch reported that the mock election was a good experience for the City Board of Elections.

Security Review

The Freeman, Craft, and McGregor Group returned to Maryland to review the security procedures at the Local Boards. The Group visited three counties and conducted a security audit that included review of the counties' compliance with the State's ISSP (Information System Security Plan), review of their absentee voting procedures, verification of the software loaded on the GEMS server, optical scan units, and touchscreen voting units. The security report will be completed no later than September 5, 2006, although Ms. Lamone expects a report sooner than September. SBE would like to thank the staff from Harford, Howard, and Kent Counties' staff for participating in the review.

Procedures

The voting system team is revising the Conducting the Election Guide to support Early Voting and the Electronic Poll Books. Additionally, the care, custody, and control procedures for the OS memory cards and touchscreen memory cards will be incorporated in the Conducting the Election Guide.

The voting system team has supported various demonstrations of the Electronic Poll Book to media groups and other interested parties.

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**Candidacy and Campaign Finance Division**

Filings

As of date of the meeting, approximately 450 candidates have officially filed for office. Ms. Lamone noted that there are less than two weeks left before the deadline, and the office will be quite busy over the next couple of weeks.

Newsletter

The Spring Edition of the Campaign Finance Newsletter has been completed. It is available on the website and was mailed to all candidates, chairmen and treasurers.

Additionally, the Candidacy and Campaign Finance Division issued a memorandum regarding fundraising during Special Session for members of the General Assembly. The memorandum was distributed to the House and Senate leadership for distribution to their respective members.

At the conclusion of Ms. Lamone's report, Mr. Burger requested re-confirmation on the number of valid signatures for each of the bills in the petition effort and why the numbers are subject to change. Ms. Lamone provided the numbers and responded that the local boards are still reviewing signatures. Mr. Burger also asked if the Freeman, Craft, and McGregor Group would be providing in-process security review reports, to which Ms. Lamone reported that the work is progressing and she expects to receive a report in July. She noted that the firm is providing constant feedback.

Mr. Burger thanked Mr. DeMarinis for his effort with the newsletter and commented on the spirit of collaboration with the local boards. Ms. Widerman inquired about the contract modification for the electronic pollbook contract, and Mr. Goldstein responded that it was still in progress. Ms. Lamone noted that the contract modification process is the vehicle to increase the quantity of electronic pollbooks.

**ASSISTANT ATTORNEY GENERAL'S REPORT**

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

**Litigation**

*Nader for President 2004 v. SBE* (fee petition claim for 2004 election)(Cir. Ct. For Anne Arundel County) – A decision of the fee petition has been pending since May.

*Hufnagel v. State Board of Elections* (2002 denial of ballot access to Green Party)(Circ. Ct. for Anne Arundel Co.) – SBE's motions to dismiss were filed in October 2005 and are still pending.

*Schaefer v. Lamone and Rayburn* (U.S. District Court, Judge Legg) – Plaintiff, a pro se voter and potential candidate, challenges the statutory ballot placement scheme. He claims that arranging primary candidates alphabetically denies him equal protection. The parties' cross motions for summary judgment have been pending for two weeks.

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*Getty v. Carroll County Bd. of Elections* (Court of Appeals) – On June 2, the Court of Appeals issued a per curiam order, with an opinion to be filed later, providing for three commissioners to be elected at large.

*Schade v. SBE* (Circ. Ct. for Anne Arundel Co.) – Judge Manck recently issued a scheduling and discovery order. A pretrial conference will occur in June 2007. Discovery continues until next year. Plaintiffs are entitled to no more than 100 additional hours of search time for documents; their pending motions to compel are denied. SBE has answered interrogatories relating to security measures.

*Maryland Green Party v. Maryland Board of Elections* (2000 denial of ballot access to Green Party; claim for attorneys fees)(Cir. Ct. for Anne Arundel Co. ) – Plaintiff has filed an attorney fee claim of \$507K. The parties are in active discovery, with the State questioning the hourly fee charged by the plaintiff's attorneys.

Mr. Davis referenced his other activities.

**APPROVAL OF PROVISIONAL VOTING GUIDELINES**

Mr. Goldstein reported that he met with representatives of the Maryland Association of Election Officials to discuss the Provisional Voting Guidelines. Representatives of Anne Arundel County, Baltimore City, Charles, Montgomery, and St. Mary's Counties participated. Mr. Goldstein explained that the proposed guidelines are substantially similar to the guidelines from the 2004 election and highlighted the following amendments:

1. Removed references to "secrecy envelope" (§ 1.3) since they were not being used and would not be practical with the current application envelope;
2. Added a provisional ballot issuance reason for "pending" applicants who are required under HAVA to provide a driver's license or social security number (if no driver's license) but have not yet done so. These applications are required to present identification before voting and vote a provisional ballot (§ 2.1.3);
3. Included references to electronic pollbooks (§ 2.1.4 and throughout guidelines);
4. Updated instructions for challenged voters as required by 2005 legislation (§ 2.1.5);
5. Added a provisional ballot issuance reason for "pending" applicants (§ 2.3(C));
6. Updated instructions, listed types of acceptable identification for a voter who is challenged, and provided that a voter who provides acceptable identification will be allowed to vote a regular ballot as required by 2005 Legislation (§ 2.3(E));
7. Increased number of provisional ballot applications supplied to a polling place on or near a college campus. During the 2004 elections, these precincts tended to have a higher rate of provisional ballots issued (§ 5.1(E));
8. Defined what provisional ballot a voter voting during early voting will receive (§ 5.2(B));
9. Removed reference to "secrecy envelope" (§ 7.1);
10. Changed language to accommodate early voting (§ 7.1);

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11. Removed reference to spreadsheet LBEs previously needed to provide for free access system and requires that information be entered into MDVOTERS. Information for the free access system can be generated from MDVOTERS (§ 7.1D);
12. Added instructions for canvassing provisional ballots voted by “pending” applicants (§ 7.4(F));
13. Added instruction that only the voter who completed the provisional ballot application can access the application. This is based on Attorney General advice in 2004 (§ 8.1(B));
14. Added requirement to track number of provisional ballot applications issued during early voting (§ 8.2(A)(2));
15. Changed language because MDVOTERS can provide the required information for the free access system (§ 8.3); and
16. Added requirement that Election Director follow-up with all “pending” applicants whose provisional ballot applications were rejected.

Mr. Goldstein also referenced a flowchart showing the canvassing of a provisional ballot.

Ms. Beck asked whether election judges during early voting will have the ability to look up whether someone is registered to vote, to which Mr. Goldstein responded that they will have this ability. Ms. Beck inquired as to whether the judges could identify whether the voter is in the wrong location. Mr. Goldstein responded that this is an issue for election judges’ training. Mr. Goldstein stated that the election judge can tell the voter where his or her correct polling place is but the Help America Vote Act (HAVA) grants the voter the right to a provisional ballot. Ms. Beck commented that a phone call to the election office is not required, because the election judges will have access to the information.

Ms. Widerman suggested changing in § 2.4(A)(4)(a) “received” to “issued” and noted that she was disturbed that a provisional ballot would be issued to someone who has already voted. Mr. Goldstein explained that, since the electronic pollbook system will display that the voter has already voted, the election judges could give the voter a warning but must allow him or her to vote a provisional ballot if he or she wishes to vote it. Mr. Goldstein noted that this could serve as a safeguard in the event that an election judge made a mistake when checking in a different voter.

Ms. Widerman stated that the document does not include guidelines on how to determine what is a valid vote during canvassing. She inquired as to whether a ballot cast on the voting unit trumps a provisional ballot and which provisional ballot is counted if the voter voted two provisional ballots. She stated that this needs to be clear and uniform statewide. Mr. Goldstein offered to review the issue and noted that a vote on the voting unit must be accepted since it cannot be retrieved. Mr. Burger agreed. Mr. Fleckenstein inquired as to what circumstances would cause this problem, to which Mr. Goldstein responded that a voter could show up in another county and receive a provisional ballot.

Ms. Widerman noted that §2.2(A)(1)(b) permits a local election director to issue a provisional ballot at the local board office to a voter prior to election day if the election director determines that the voter will not otherwise be qualified to vote a regular ballot. Mr. Widerman asked how

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this situation could occur. In response, Mr. Goldstein explained that a voter who is eligible to vote a provisional ballot comes to the election office to vote. Ms. Widerman asked whether the issuance reasons listed in § 2.3(A) – (E) were included in MDVOTERS, to which Mr. Goldstein responded that an election judge selects the appropriate issuance reason on the back of the provisional ballot application.

Ms. Widerman inquired as to whether someone who has already voted is ineligible to vote a regular ballot (§ 6.1(B)(1)), and Mr. Goldstein responded that the voter is ineligible. She also inquired as to how the provisional ballots were kept secure, to which Mr. Goldstein responded that this information was included in the judges' manual. Ms. Widerman asked whether MDVOTERS captures the issuance and return of absentee ballots, and Mr. Goldstein responded that it did. Ms. Widerman inquired as to whether a voter who is marked as having been issued an absentee ballot can receive a provisional ballot, to which Mr. Goldstein responded that the voter is eligible for a provisional ballot.

Mr. Burger stated that Montgomery County Board of Elections requests that the guidelines be explicit that, prior to provisional ballot canvassing, all voting history be entered in MDVOTERS and offered that § 7.1 would be the appropriate place for this language. Ms. Lamone responded that she would like to discuss this suggested language with other local boards. Mr. Goldstein noted that the request would be reasonable if electronic pollbooks were secured for election day. Mr. Burger stated that he understood that the State was going forward with electronic pollbooks, to which Mr. Goldstein explained that the State only has 200 electronic pollbooks and will need to return to the Board of Public Works for the remaining units. Ms. Widerman inquired as to when this would be known, and Mr. Goldstein stated by the end of July. Mr. Burger noted that there would be the same requirement that history be uploaded. Ms. Widerman stated that she did not like that the provisional ballot canvass would be conducted without voter history in the system. Mr. Goldstein responded that the provisional ballot canvass has been historically conducted without knowing voter history and it has not been abused.

Mr. Burger inquired about the required notice for the provisional ballot canvass (§ 7.3). Mr. Goldstein responded that there are existing regulations about the notice. Mr. Burger asked if there are regulations on how to conduct the canvass. Mr. Goldstein stated that he would review existing regulations and instructions.

Mr. Goldstein noted that the proposed guidelines need to be adopted. Mr. Burger noted that, upon approval of the electronic pollbooks, he would like to require entry of voter history before the provisional ballot canvass.

Ms. Beck inquired why the information about calling the election office and providing a street directory is in the guidelines when the judges will be able to look up information in the electronic pollbooks. Mr. Goldstein noted that this information was recommended procedures, not requirements, and that the judges' ability to look up information presumed electronic pollbooks. Mr. Burger stated that he preferred not to make any more changes to the guidelines but noted that the guidelines were subject to future revision.

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Mr. Burger made a motion to approve the guidelines as amended (amending § 2.1(A)(4)(a)), and Mr. Fleckenstein seconded the motion. The motion passed unanimously.

**APPROVAL OF EARLY VOTING GUIDELINES**

Mr. Goldstein explained that the proposed Early Voting Guidelines were based on the previously distributed administrative issues for early voting. Mr. Goldstein highlighted the following areas that were different from the administrative issues:

1. Added requirement that each local board provide an early voting security plan for approval to the Chief Information Systems Security Officer (§ 2.5);
2. Included estimated voter turnout for early voting and election day. This section relates to the proposed regulation and allows adjustment for different turnout (§ 3);
3. Allows the local board to reduce the number of voting units for early voting. This was the result of a discussion from a prior board meeting (§ 4.2);
4. Reorganized the turnout information provided during early voting (§ 8.2); and
5. Added information about the public education required by House Bill 1368. The local boards will determine whether to send separate mailing or include early voting information in specimen ballot (§ 9).

Ms. Beck asked whether “voting equipment” in § 2.5(B) included provisional ballots, to which Mr. Goldstein responded that it did. Ms. Beck proposed adding a reference to provisional voting materials in section 2.5.

Ms. Widerman suggested clarifying that the two election judges assigned to each electronic pollbook would be of differing parties (§ 5.1(C)(3)). Ms. Widerman recalled asking a representative of Diebold Election Systems, Inc. whether information from each electronic pollbook could be downloaded daily, and the representative responded that doing so would not require a lot of resources. Mr. Goldstein stated that his recollection of the conversation was different but that he would look into it.

Ms. Widerman inquired as to who would be able to get the daily voter turnout information from early voting and why. Mr. Goldstein responded that whoever asked for the information would get it and assumed that candidates and political parties would be asking for it. Ms. Widerman asked whether this information could wait until election day, to which Mr. Goldstein responded that the information would be available before election day. Ms. Widerman stated that she was opposed to distributing this information.

Mr. Burger also stated that he opposed releasing this information daily and that the average voter would not be comfortable with this agency releasing who voted. Mr. Burger stated that he has no problem releasing the number and the party affiliation of early voters. Ms. Widerman stated that she opposed providing information by name or by party affiliation. Mr. Fleckenstein noted that this information is essentially public information and is public when it is created. He compared this information to obtaining a list of individuals who were issued an absentee ballot. Mr. Burger noted that there is a difference between asking how many voters were issued an absentee ballot

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and the number of absentee voters. Mr. Fleckenstein responded that the information is public information and that the Board cannot legally distinguish between absentee voting information and early voting information. Mr. Burger noted that this is an argument between public information and privacy concerns. Ms. Beck asked for Mr. Davis' opinion, and Mr. Davis advised that the information is public information. Mr. Burger stated that the political parties can use pollwatchers to identify who has voted and that the State Board can determine that the information is not public. He noted that it would not be changing the existing process but would not be extending it to early voting. Mr. Burger noted that he would like to remove § 8.2(A). Ms. Beck and Ms. Widerman agreed, and Ms. Mack disagreed. Following additional discussion on privacy concerns and withholding public information, Mr. Burger made a motion to approve the guidelines as amended (amending § 2.5(B) and § 5.1(C)(3) and deleting § 8.2(A)), and Ms. Widerman seconded the motion. Mr. Burger, Ms. Beck, and Ms. Widerman voted in favor of the motion, and Mr. Fleckenstein and Ms. Mack voted against the motion. The motion failed.

Mr. Fleckenstein made a motion to re-open discussion of this matter, and the motion was seconded. The motion passed unanimously.

Mr. Fleckenstein asked for the basis of the estimated voter turnout. Mr. Goldstein explained that statistics from other states showed early voting turnout ranging from 5% to 30%. Because of the space issues in some of the early voting locations, Mr. Fleckenstein offered to reduce turnout estimations by 20%, give the local boards more discretion and allow a 10% deviation in the number of voting units per location. Mr. Goldstein explained that regulations contemplate 100% turnout and 1 voting unit per 200 voters.

Mr. Fleckenstein inquired whether the local boards can be directed to include early voting information in the specimen ballot (§ 9.2). Mr. Goldstein responded that some of the local boards indicated that there is not enough time to move the mailing of the specimen mailing back before early voting begins.

Ms. Mack noted that, if expected turnout for early voting is 20% but actual turnout is less, election officials might be underprepared for election day. Mr. Goldstein responded that election officials prepare for 100% turnout, and because they do not get that level of turnout, there is still some flexibility. Mr. Fleckenstein offered to allow the local boards to reduce the number of units by 10%, not 5% (§ 4.2).

Mr. Burger asked Mr. Fleckenstein and Ms. Mack to what they would agree on early voting turnout information. Ms. Mack proposed removing the early voting turnout language from the guidelines (§ 8.2), to which Mr. Burger responded that he wants to prevent the release of this information. Ms. Mack proposed amending § 8.2 to prohibit the release of information by voter. Ms. Widerman stated that she does not want turnout by party affiliation. After discussing what "jurisdiction" means, Mr. Burger made a motion to amend § 8.2(A)(1) to allow early voting turnout information by county, and Ms. Beck seconded the motion. Ms. Beck asked whether turnout would be provided by numbers or by individual names, to which Ms. Widerman responded that only numbers would be provided. Mr. Burger, Ms. Beck, and Ms. Widerman voted in favor of the motion, and Mr. Fleckenstein and Ms. Mack voted against the motion. The motion failed.

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Mr. Burger amended the motion to allow early voting turnout information by county and by party affiliation, and Ms. Mack seconded the motion. Mr. Burger, Ms. Beck, and Ms. Mack voted in favor of the motion, and Mr. Fleckenstein and Ms. Widerman voted against the motion. The motion failed.

Ms. Beck proposed removing § 8.2 in its entirety, to which Mr. Burger responded that that had already been voted on. Ms. Widerman asked whether removing § 8.2 would allow the issuance of these reports, to which Mr. Burger responded that it would not. Mr. Davis advised that if the guidelines were silent, the Public Information Act would govern. Mr. Fleckenstein made a motion to approve the guidelines as amended (amending § 2.5(B), § 4.2, and § 5.1(C)(3) and deleting § 8.2), and Ms. Mack seconded the motion. The motion passed unanimously.

At 4:00 p.m., Mr. Burger adjourned the meeting for a short break. Mr. Burger reconvened the meeting at 4:17 p.m.

### **APPROVAL OF NURSING HOME PROCEDURES**

Ms. Trella referred the Board members to the proposed procedures and a supplemental handout with three edits (pages 1.3, 1.4, and 5.7). She provided a history of voter registration and absentee voting at nursing home and assisted living facilities. She explained that the program began in 1998, and Ms. Mack noted that the State's program was based on the program implemented in Prince George's County. Ms. Trella noted that one of the local boards requested in 2005 that the procedures be updated, and representatives of the local boards provided input on existing procedures. The proposed procedures are the result of this effort and are substantially the same as the existing procedures. Ms. Trella noted that the requirements of House Bill 1368 merely codified existing procedures. Donna Duncan noted that the procedures were included in the 1999 Biennial Notebook.

Ms. Trella explained that the changes to the procedures were primarily formatting, not substantive. The procedures also address questions that have been raised in the past. In addition, the procedures apply to facilities that have 50 or more residents (in comparison to the prior procedures that did not apply any limitation).

Ms. Lamone pointed out that Montgomery County had indicated that conducting the procedures for all facilities would be too ambitious. Ms. Lamone also noted that Montgomery County has never followed the procedures.

Ms. Beck asked about the instruction for securing voted absentee ballots. Ms. Duncan responded that the language in the proposed procedures did not specify the exact location that the voted absentee ballots should be stored, since local boards vary in their secure location (i.e., safe, locked cage, etc). Ms. Beck requested that language be added to page 1.8 clarifying that the ballots may be removed from the bag or box if it is necessary to put the ballots in a secure location.

Ms. Widerman asked how the local boards "process" voter registration applications, absentee ballot applications, and absentee ballots. Ms. Trella responded that the local boards would enter

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the information into MDVOTERS and take the same steps that they do when they receive voter registration applications, absentee ballot applications, and absentee ballots from other sources. Ms. Widerman inquired whether these voters use the facility address or their prior residence address as their residential address for voting purposes. Ms. Trella noted that residency is determined by the voter or voter registration applicant. In response to a question from Ms. Widerman about whether the local boards were going to be able to implement these procedures, Ms. Trella noted that the proposed procedures were similar to the previously issued procedures and that most of the local boards were already following the existing procedures.

Ms. Beck expressed her concern for the local boards with the complexity of the bureaucracy. Mr. Burger noted that he disagreed with the comment about the bureaucracy and suggested that there be flexibility written into the process. Ms. Widerman asked whether the program required an actual visit, to which Ms. Trella explained that the proposed procedures require visits to all nursing homes and assisted living facilities with at least 50 residents. Ms. Trella noted that the purpose of the program was to create an environment where residents of these facilities could vote without undue influence from others.

Mr. Fleckenstein asked Margaret Jurgensen, Election Director for the Montgomery County Board of Elections, if she had any comments. Ms. Jurgensen asked what impact the successful referendum and any subsequent repeal of House Bill 1368 would have on the procedures. Mr. Davis responded that, since House Bill 1368 was enacted as emergency legislation, the current petition effort does not impact these procedures for the 2006 election. If the petition effort is successful and the voters vote against House Bill 1368, the procedures would be an open question for 2008. Mr. Burger responded that the Board would wait to determine what is required for 2008.

Mr. Burger stated that he supports the program but is sensitive to the workload of the local boards. Ms. Beck expressed concern about the security of the ballots. Ms. Trella explained that the individuals visiting the facilities take an oath, voted ballots are placed in a secure bag or box at the facility, the ballots are transported by an election official or a bi-partisan team, and the local boards store them in a secure location in the office. Ms. Trella noted that the individuals conducting this program are similar to election judges.

Mr. Burger noted his concern with staffing this program. Ms. Mack explained that staffing was never a problem in Prince George's County. Sara Harris, Deputy Election Director for the Montgomery County Board of Elections, explained that Montgomery County Board of Elections has a coordinator for this program, the ballots are tracked and secured to and from the facilities, and visits are made by bi-partisan teams.

Ms. Mack made a motion to approve the procedures as amended on pages 1.3, 1.4, 1.8, and 5.7, and Mr. Fleckenstein seconded the motion. The motion passed unanimously.

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STATE BOARD MEETING

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**APPROVAL OF ABSENTEE VOTING PROCEDURES**

Ms. Trella explained that the recently revised Federal Post Card Application includes an instruction for an overseas or military voter to note any elections for which the voter does not want to receive an absentee ballot. To accommodate the voter's request, Ms. Trella proposed adding language to the Procedures for the Administration of Absentee Voting that would allow a local board to respect the voter's request and not send an absentee ballot for the election in which the voter does not want to vote.

Ms. Beck asked about the second absentee ballot canvass, to which Ms. Duncan stated that the remaining absentee ballots are canvassed at that time. Mr. Burger made a motion to approve the procedures as proposed, and Mr. Fleckenstein seconded the motion. The motion was approved unanimously.

**REGULATIONS**

Proposed Regulations for Adoption

*33.10.02.07* (Number of Voting Units) – Mr. Goldstein explained that the Early Voting Guidelines establish the estimated voter turnout for early voting and Election Day. The proposed regulation requires that the State Board sets the estimated turnout before each election and works in conjunction with the previously approved guidelines. Mr. Fleckenstein made a motion to adopt the proposed changes as both a proposed regulation and an emergency regulation, and Ms. Widerman seconded the motion. The motion passed unanimously.

*33.11.04.07* (Opening Absentee Ballot Return Envelopes) – Ms. Duncan referenced the discussion at last month's board meeting about whether an absentee ballot with no dated oath, no postmark, and no date and time stamp should be accepted. Ms. Duncan proposed that *33.11.04.07(B)(4)* be amended to reflect that the local board of canvassers shall reject an absentee ballot if an absentee ballot's timeliness cannot be verified. Mr. Burger made a motion to adopt the proposed changes as both a proposed regulation and an emergency regulation, and Ms. Mack seconded the motion. The motion passed unanimously.

**WAIVER OF LATE FEES**

Mr. DeMarinis presented a request by Ms. Davidson-Gibbs to waive her liability for late fees associated with her former committee, People For Responsible Government Slate, A4236. Mr. DeMarinis informed the Board that, in her former role as Chairman, she encountered numerous difficulties dealing with the treasurer. Her claims were verified by correspondences sent between Ms. Davidson-Gibbs and the treasurer. Mr. DeMarinis said it is the Administrator's recommendation to grant the waiver request to Ms. Davidson-Gibbs only. The treasurer would still be responsible for the outstanding late fees. Mr. Fleckenstein made a motion to grant the Administrator's recommendation, and Ms. Widerman seconded the motion. The motion passed unanimously.

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**STATE BOARD MEETING**

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**OLD BUSINESS**

Ms. Mack reported that she attended the retirement party for Robin Downs Colbert and, on behalf of the State Board, thanked her for her service. Mr. Burger noted that Ms. Colbert was a contributor to elections in Prince George's County and the State of Maryland.

**NEW BUSINESS**

None.

**SCHEDULING OF JULY MEETING**

The next meeting of the State Board will be held on Monday, July 24, 2006, at 1:30 p.m.

**SUMMARY OF CLOSED SESSION**

May 23, 2006

Mr. Burger convened a closed session on May 23, 2006, at 5:00 p.m. pursuant to a Statement for Closed Meeting to discuss the current status of negotiations of the Diebold e-poll books contract pursuant to State Government Article §10-508(a)(14). No Board actions were taken. Mr. Burger adjourned the meeting at 5:40 p.m.

**ADJOURNMENT**

The meeting was adjourned at 4:50 p.m.

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Gilles W. Burger, Chairman