

AUGUST 10, 2004
STATE BOARD MEETING
151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Susan Wideman, Member
Gene Raynor, Member
Judy Arnold, Assistant Attorney General
Linda Lamone, State Administrator
Donna J. Duncan, Director of Elections Management
Mary Cramer Wagner, Voter Registration Director
Pam Woodside, Director of Information Technology
Ross Goldstein, Director of Candidacy Campaign Finance Division
Terry Harris, Deputy Director of Candidacy Campaign Finance Division
Nikki Trella, Election Reform Director

Also Present: Mike Curtis, Accenture
Courtney Keith, Accenture
Alan Zismann, Accenture
Rick Wheeler, Accenture
Brett Daniels, Accenture
Fred Bowerline, St. Circuit 45th District
Edward W. Chojnowski, Anne Arundel County
Barbara Jackson, Baltimore City
Brenda Williams, Queen Anne's County
Judy Ritter, Wicomico County
Earl Kelly, The Capital
Robert J. Antonetti, Sr.
Carole Streeting, Anne Arundel County
Barbara Fisher, Anne Arundel County
Guy Harriman, Howard County
Sara Harris, Montgomery County
Nancy Dacek, Montgomery County
Kenneth Fox, Prince George's County Resident
John Wagner, The Washington Post
Bill O'Leady, The Washington Post Photographer
Molly Neal, Harford County
Katie Brown, Harford County
Darlene Anderson, Baltimore County
Jackie McDaniel, Baltimore County
Henry C. Marshall, Voter
Dave Laning, Baltimore County
T. Kei, Baltimore City
E. Scheffer, Montgomery County
Regina Holt, Howard County Voter
Ruth Fort, Montgomery County
Barbara Nash, Montgomery County
Charles & Sylvia Schmidt, Baltimore County

DECLARATION OF QUORUM PRESENT

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After establishing the presence of a quorum, Mr. Burger called the meeting to order at 1:30 p.m. Mr. Burger welcomed citizens and election directors attending today's meeting.

COMMENTS

Mr. Burger said he was pleased to see those interested in our activities at this meeting. Mr. Burger also welcomed Gene Raynor as the newest Democratic Board member from Baltimore City, who was sworn in at the Circuit Court.

Mr. Burger also lauded Sara Harris and Dianna Long for their participation by the EAC Best Practices Workshop on Provisional and DRE voting.

APPROVAL OF MINUTES OF MEETING OF JULY 7, 2004

Mr. Burger pointed out that the minutes from the last board meeting lacked the necessary detail and specificity that would enable a citizen to pick them up and know what occurred at the meeting. Mr. Burger stated that he would be amending them. Ms. Beck also wanted to amend the minutes to thank the Chairman and members of the Board, not just Bobbi Mack, for their efforts in obtaining the additional space for the SBE staff. She also noted that it was inaccurate to thank only one member. Ms. Widerman agreed that the minutes from the prior meeting lacked detail and amended one of her statements.

ADDITIONS TO THE AGENDA

None.

ADMINISTRATOR'S UPDATE

VOTING SYSTEM SAFEGUARDS

Ms. Lamone stated that the voting system software upgrade is being conducted this week and that the GEMS servers will be refreshed and tested by SBE. She added that the upgrade to the encoders, battery changes and end-to-end testing have gone very well. The new software code is in escrow and we have received the ITA testing documentation. Additionally, new anti-virus software has been installed. The voting system upgrade and testing are ahead of schedule.

DOCUMENTATION

In accordance with the Work Plan, five voting system documents have been targeted for re-writes for the General Election. These re-writes have occupied considerable time and effort from SBE staff, Accenture, Diebold headquarters staff and several Regional Managers. Also, in accordance with the Work Plan, the rewritten documents will be sent to the local members of the Documentation Committee for review and comment. Mr. Burger asked for further explanation of the Committees. Ms. Lamone explained the Work Plan established five key areas for focus - Documentation, Paperwork Reduction, Election Judge Manual, Communication, and Election Day Operations. Committees were established for each of the five areas and are made up of two or three members from the local boards and one SBE staff member. Some areas have short term goals for the upcoming election, but

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all also have long term goals for enhancement of processes, procedures and documentation for future elections.

REQUEST FOR PROPOSAL FOR VOTER REGISTRATION SYSTEM

Ms. Lamone complemented John Clark and staff on the development of the Voter Registration System RFP. Ms. Lamone also noted that a major component of the proposal is the system requirements document that was developed by the Voter Registration System Committees last year. Ms. Lamone indicated that it was also a good collaborative process with the Department of Budget and Management (DBM). Ms. Lamone went on to inform the Board that a pre-bid conference was held in the Joint Hearing Room of Legislative Services and that it went very well. The staff is currently heavily involved with development of responses to questions from the vendors. Ms. Lamone also noted that John Clark and his staff received positive feedback about the RFP from the vendor community.

PRINCE GEORGE'S COUNTY SPECIAL ELECTION

Prince George's County will conduct a special primary election for County Council on September 14, 2004. The general election for the office will be combined with the Presidential General. Approximately 75 voting units are scheduled for use in the special primary. These machines will be used for the General Election and the turnaround time for preparing these machines will be very short. Ms. Lamone advised the Board that the security keys will be different for both the Special Primary and General Elections.

CAMPAIGN FINANCE CLASS

Mr. Goldstein will be conducting a seminar on campaign finance compliance and electronic filing in Talbot County later this week.

BALLOT PRODUCTION

Ms. Duncan and her staff will begin production of the 2004 Presidential General Election ballot on the 24th of August. The process will be ongoing for several weeks.

PETITIONS

On Monday, August 2nd, the Populist Party submitted a petition to form a new political party. The petitions containing approximately 15,000 signatures have been forwarded to the local boards of elections for verification. The constitution and bylaws of the new party have been sent to the Attorney General for review and approval. The Presidential Candidate for the Populist Party is Ralph Nader.

NASED

The summer annual National Association of State Election Directors (NASED) conference was recently held in Portland, Oregon. Forty-five states, including Maryland, were represented.

Ms. Lamone advised the Board that she had made a presentation to the organization relating to security and had assisted with other seminars. Ms. Lamone reported that many of the "best practice" recommendations have already been implemented or are being implemented in Maryland. Ms. Lamone also advised the Board that states are reporting increased number of media calls relating to the upcoming election.

IT PROJECTS UPDATE

Mr. Burger discussed the current data matching project to check the records of voters that may have voted a provisional ballot and voted at the polling place. He wanted to ensure the integrity of the elections.

Mr. Burger asked the Board if there were any questions for Ms. Lamone or her staff. There were none.

ASSISTANT ATTORNEY GENERAL'S UPDATE

Ms. Arnold advised that she had submitted her written report to the Board and would provide further explanation on any of the issues and would provide an update on some of the litigation.

SCHADE LITIGATION

Ms. Arnold stated that she had received the papers filed in the Court of Appeals. She went on to say that the settlement conference this morning was unproductive to which Mr. Burger asked her to clarify. Ms. Arnold stated there was no movement on either side. In response to a question, she added that the mediation judge assigned is different from the presiding judge.

CAROLINE COUNTY

Ms. Arnold explained that Caroline County is currently in the process of trying to remove a local referendum question from the ballot. The County Council has changed the law, and therefore there is no need to have the question on the ballot. She continued by saying that an election director does not have the ability or authority to remove the question without a court order and that process is currently underway.

WORCESTER COUNTY

Ms. Arnold said that condominium associations in Worcester County are urging dual resident condominium owners, who own property in both Worcester County and elsewhere in the State, to register to vote in Worcester County so that they may have a say in issues that affect them. However, the information from the associations was problematic since it did not clearly state that the address used for registration should be your domicile or permanent residence (i.e. the place where you pay your taxes and where your children go to school). Accordingly, if an individual changed his or her registration to Worcester County, the address used would become a primary residence, which could have tax and other ramifications to the voter. The Mayor and Council have asked for an Attorney General's opinion. Ms. Widerman asked to be kept abreast of this issue.

Ms. Widerman advised that, at the Biennial Conference there was a discussion regarding the voter registration issue, specifically the primary residence issue from Worcester County, and how the law is stated in the Constitution. She asked that Ms. Arnold keep her posted on the issue.

Ms. Beck stated that since this issue has been heard in many courts over the years, there should be supporting precedence.

DIEBOLD

Ms. Arnold advised that Diebold has filed a formal contract claim for interest on late payments on its contract, which has to be handled by the SBE Procurement Officer. If this is not resolved satisfactorily, Diebold will appeal which could mean potential litigation.

Mr. Burger asked if there were any questions for Ms. Arnold regarding her report.

POLLING PLACE CHANGE REQUESTS

Donna Duncan submitted requests from Frederick and Somerset Counties for changes to polling places for the General Election.

On a motion from Ms. Widerman, seconded by Ms Beck the Board approved these requests. All Board Members were in favor of the motion.

APPROVAL OF PROPOSED REGULATIONS

Mr. Burger stated that the Board would defer discussion on regulation proposal #1 that amends Chapter 33.01.05 (Administrative Compliant Procedures). Ms. Beck also asked that this be held and discussed in the future. A motion by Ms. Beck to table proposal #1 was seconded by Ms. Widerman.

Proposed regulation #2 amends Chapter 33.04.02 (confidentiality of certain records). The proposed regulation resolves the conflict between the Election Law Article (which authorizes the local board to make certain voter registration records confidential) and the regulations (which authorize the election director to make certain records confidential). The proposed regulation changes the authority from the election director to the local board. The proposed regulation elicited no comments and on a motion by Ms. Beck, seconded by Ms. Widerman, the Board Members passed proposal #2. Mr. Raynor abstained from voting on this issue.

Proposed regulation #3 amends Chapter 33.08.02 to create a uniform definition of a vote. Section 301(a)(6) of the Help America Vote Act requires that each State adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for the voting systems used in the State. The proposed regulations define what constitutes a vote and what will be counted as a vote on the DRE voting system and for the optical scan voting system.

Joe Torre was asked what constitutes a vote in the voting system. Mr. Burger stated you can write-in a last name in for a vote. The following question was raised: What if a voter writes in someone who is already on the ballot? Ms. Arnold advised that the vote is counted. On a motion by Ms. Widerman, seconded by Ms. Beck, the Board voted to approve the proposed regulation. Mr. Raynor abstained from voting.

Proposed regulations #4 amends Chapter 33.11.03 and .04. These proposed regulations allow a voter to use a private mail carrier to return an absentee ballot, eliminates an incorrect reference to the provisional ballot canvass, establishes when the second absentee ballot canvass can commence, and requires that at least 5 absentee ballots of each ballot style be held back for both the provisional ballot canvass and the second absentee ballot canvass. On a motion by Mr. Burger and seconded by Mr. Beck, all Board Members approved.

SECURITY POLICY FOR ACCUMULATOR VOTING UNITS

Mr. Burger received communication from the Montgomery County Board President asking for time on the agenda to discuss a decision of the State Administrator and staff regarding the transmission of unofficial election night results from the polling place. MAEO President Barbara Fisher addressed the Board on this issue and asked the Board to change the determination made by the State Administrator and staff prohibiting voting units from being moved to any other room in the polling place for transmission of results. Ms. Fisher explained that many polling places do not have telephone line hook-ups in the actual polling room, and the accumulator machine would be taken to another room, such as an office in a school. If the accumulator unit cannot be moved outside of the polling room for this purpose, the counties would either not be able to modem results for many precincts or have to pay to have phone lines put into the actual polling room. The latter option is not realistic in these tight budget times and with limited time and resources.

Mr. Burger asked Ms. Lamone to explain to the Board the reasoning for the decision. Ms. Lamone explained that the security of the election process must be transparent to the public and the removal of a voting unit from the public voting room could present questions.

Nancy Dacek, President of the Montgomery County Board, informed the Board that it would cost approximately \$88,000 for Montgomery County to place telephone outlets in the polling rooms that currently do not have them. She continued with an explanation to the Board that the accumulator would be taken to the telephone line by election judges of differing party affiliations. Ms. Dacek also pointed out that the public, candidates and the media will be expecting the results of the election as quickly as possible, and the inability to send them electronically will considerably slow down this process.

Mr. Burger asked which local boards present at the meeting would be affected by the policy. Representatives from Harford, Anne Arundel, Montgomery, and Baltimore Counties raised their hands. Barbara Fisher informed the Board that Anne Arundel County has 92 precincts that would not be able to transmit results. Nancy Dacek noted that 174 Montgomery County precincts would not be able to transmit results.

Ms. Lamone pointed out that the voting process was made as transparent as possible and the concern that modeming the results from any place other than the public voting area would look bad.

Mr. Burger asked if poll watchers could be present during the movement of the voting units. Ms. Lamone replied, that they could in some cases depending on the room size. Mr.

Burger acknowledged that he was trying to find some common ground. Ms. Fisher stated that, in some polling places, the only room available to modem the results is a school office, which would make school authorities uneasy if the office is be open to the public.

Mr. Burger indicated that the policy should stand. Ms. Beck said that there is no question about a policy that protects the security of the system and wants further discussion at a later date. Ms. Fisher requested an answer soon because Anne Arundel County starts election judges training on August 17th and re-training the judges would be necessary with the change in policy. Ms. Dacek indicated that judge training begins this month in Montgomery County. Ms. Fisher added that the Election Directors are willing to follow whichever policy is decided they just want to know what that decision will be.

At this point Mr. Raynor stated that security is more important than speed. Mr. Burger asked Ms. Lamone if she had any recommendations.

Ms. Lamone believes that in light of the current controversy surrounding the voting system and the upcoming election, we all need to use extreme caution and we need to make sure the process is clear and understood by the public and press. Ms. Dacek stated that poll watchers sign in and stay even after polls are closed and could be made up as a representation of the public. To this, Mr. Burger agreed.

Molly Neal, Election Director of Harford County, stated that security is a perception and we are fighting an invisible fight since we don't know what the public wants. She advised that the Totals Reports are printed from each machine prior to the machine being moved to the telephone line for transmission of results. The machines could be prompted to print another totals report when the machine is returned and the two could be compared. This would assure the public that the machine was not altered. Additionally, any results that are modemed are verified the next day. Mr. Burger asked if the results had a police escort while being transported. The consensus was a resounding no. Jackie McDaniel, Election Director of Baltimore County, asked the Board to decide quickly so that she may proceed as needed to accomplish 100% modeming of results. It was suggested that during the site surveys a room could be found at the polling place that is both suitable for the election judges to modem results as well as be large enough for the public to be present to witness the modeming.

Mr. Burger wants to have the policy stand and have the Directors comply with the policy. Ms. Beck admitted it is difficult to get funding from the counties but we have to guard security at all costs and she supports the policy. Ms. Widerman admits it raises concerns but suggests sticking with the policy. Mr. Burger and Mr. Raynor concurred.

VERIFICATION OF CITIZENSHIP ON VOTER ROLLS

Delegate Don Dwyer sent a letter concerning non-citizens on the voter registration rolls. Delegate Dwyer's letter requested that the MVA refrain from asking non-citizens to register to vote. There is no assurance that a person who is a non-citizen will be prevented from registering to vote. The voter registration application only requires a person to show a Maryland ID, which non-citizens can be issued, or other form of identifying material to register. The VRA also requires a person to check a box at the top if you are a citizen of

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the United States. Judy Arnold stated that it is a crime in Maryland to register to vote if the applicant is not a U.S. citizen. Ms. Lamone added that it is a deportable offense for a non-citizen to vote.

Ms. Trella and other staff members met with Del. Dwyer on the subject of citizenship and relevant provisions of HAVA. He asked whether the SSA would have complete files on citizenship, to which Ms. Trella replied that, SSA does not have complete files on citizenship. Mr. Burger asked if the MVA has the ability to check if someone is a citizen. Ms. Arnold replied that under the NVRA Act, the MVA has to ask everyone if they want to register to vote. They cannot discriminate.

Robert Antonetti advised there is no prosecution for voters who violate the law. He explained that there was a situation in Howard County where a registered non-citizen was called for Jury Duty and only then was it discovered that he in fact was not a U.S. citizen.

Ms. Beck believes that anyone who votes illegally diminishes the vote of every registered voter and she resents it. Mr. Burger wanted to know how the Board of Elections could fix this. Mr. Raynor suggested that the jury selection areas should send the information to the SBE. Ms. Lamone indicated that they do. She went on to say that if a non-citizen registers as a citizen, it is perjury. Mr. Burger wants a response written to Del. Dwyer.

Mr. Raynor wanted to know if the MVA asks applicants about their citizenship. Ms. Arnold stated that there is an Attorney General's opinion stating that the MVA cannot deny anyone the right to get a driver's license or an ID, even a non-citizen. Mr. Raynor did not think that was true. Mr. Burger stated that the Board cares if a person is a citizen for the sake of maintaining the Voter Registration list. Ms. Beck reiterated that this is an important issue.

It was agreed to defer this matter.

CHANGE TO PROVISIONAL VOTING GUIDELINES

Mr. Goldstein advised that a proposal had been made by Judy Ritter to use the back of the VAC to update voter information as opposed to using the Supplemental VAC that was used in the primary. In light of Ms. Ritter's request, the provisional ballot guidelines need to be amended to authorize the use of the back of the VAC. Ms. Beck asked if this would create confusion. Mr. Goldstein indicated this was a small change as far as procedures go, but noted that it is a move away from uniformity. The change was accepted but the Board requested that it be informed of other issues addressed.

Mr. Raynor wanted to discuss the protest voter in Howard County whose provisional ballot was rejected. Mr. Goldstein stated that this was a circumstance where someone was given a provisional ballot because they did not want to use the electronic voting unit. Mr. Raynor stated that the voter should never have been given a provisional ballot. Mr. Goldstein concurred. Mr. Raynor went on to say that once they were given the provisional ballot, they believed their ballot would be counted. Mr. Raynor expressed his opinion that the provisional ballot of the Howard County voter should have been counted.

Mr. Burger stated that this a matter of great concern as well as being a timely issue and we need clarity on the provisional ballot issue. These issues were raised in correspondence from the Howard County Board of Elections. Ms. Trella indicated she was in the process of writing a response regarding the issue. Mr. Burger wanted to know about all other issues with the Supplemental VAC.

Returning to the issue of the change in the Guidelines, Ms. Widerman explained that although she understands that changing the procedures for VAC's would reduce paperwork, she would like to have one procedure. If the Election Directors feel comfortable with both procedures, they should be clearly documented. Ms. Arnold said this was no trouble at all since it only required a minor change in the judges' manuals. Ms. Widerman made a motion to accept the proposed change. Ms. Beck seconded the motion. All Board members voted in favor of the change.

PROPOSED DEPARTMENTAL LEGISLATION

Ms. Trella and Mr. Goldstein presented the Board with proposed 2005 Departmental Legislation for approval.

PROPOSAL #1

Section 303(a) of the Help America Vote Act of 2002 requires that each State implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level." The current law does not comply with the requirements of the Help America Vote Act, because the voter registration lists are maintained and administered by each local board of elections. The proposed departmental legislation would amend Title 3 and other relevant titles to accommodate the statewide voter registration list required by the Help America Vote Act.

PROPOSAL #2

Currently, Maryland law provides that a non-principal party candidate must complete a nominating petition in order to get on the ballot. However, in *Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127, 832 A.2d 214 (2003), the Court of Appeals determined that requiring non-principal party candidates to complete a nominating petition violates the equal protection component of Article 24 of the Maryland Declaration of Rights. Accordingly, the Court struck this requirement, thereby allowing non-principal parties to nominate candidates to appear on the ballot. The court also struck the provisions of Maryland law and regulation that disallowed the counting of signatures of inactive voters in determining the sufficiency of a petition.

In order to make the Election Law Article consistent with the *Green Party* ruling, the following changes are proposed:

1. Only unaffiliated candidates will be required to file a petition to get on the ballot;
2. The candidate filing procedures for non-principal party candidates will be established consistent with the agreement between SBE and Green Party representatives as follows:
 - a. Non-principal party candidates will still be required to file a declaration of

- intent to seek nomination at the same time petition candidates file a declaration of intent; and
- b. Non-principal party candidates will be required to file proof of party nomination, the filing fee, and the financial disclosure not later than 5 p.m. on the first Monday in August in the year of the general election (thereby completing the candidate filing process); and
 3. Signatures of inactive voters will be counted when determining the sufficiency of a petition.

PROPOSAL #3

Election Law, Section 7-103 provides the procedures for preparing and certifying a ballot question. Generally, §7-103(c)(3)(i), assigns to the county attorney the duty of preparing and certifying a question that will appear in a single county or part of a county. However, there is a caveat that states, “unless some other process is mandated by law.” The concern is that this provision might allow a county to change not only who certifies a ballot question, but also the date for certification, and the information to be certified. Accordingly, in an effort to ensure uniform certification procedures, the proposal is to remove the language providing for different certification procedures.

PROPOSAL #4

There is a conflict between the date for certifying the presidential general election ballot (55 days before the election) and the deadline for filling vacancies in nomination (40 days before the election). To resolve this conflict, the proposal is to change the deadline for filling vacancies in nomination to 60 days before the election. This approach is preferable to moving the ballot certification deadline since federal guidelines request a 45 day mailing period for military and overseas ballots.

The Board approved each legislative proposal.

A question was posed to the Board about the MAEO legislative proposals. Since only Mr. Burger had the MAEO proposals in advance of the meeting, the Board decided not to review the MAEO proposals until the next meeting.

WAIVERS

Terry Harris had submitted six requests for waivers.

(#1) P. TYSON BENNETT FOR CIRCUIT COURT JUDGE COMMITTEE

The Board accepted the Administrator’s recommendation to grant the waiver.

(#2) PEOPLE FOR KEN LAUREYS

The Board accepted the Administrator’s recommendation to grant the waiver.

(#3) TALBOT COUNTY REPUBLICAN CENTRAL COMMITTEE

The Board accepted the Administrator’s recommendation to grant the waiver.

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(#4) FRIENDS OF JAMES BUTLER

The Board accepted the Administrator's recommendation to grant the waiver.

(#5) FRIENDS TO ELECT FRANK M. CONAWAY

The Board accepted the Administrator's recommendation to grant the waiver.

(#6) FRIENDS OF BOB DORSEY

The Board accepted the Administrator's recommendation to grant the waiver.

OLD BUSINESS

MAEO letter requesting adoption of "Lessons Learned".

SCHEDULING OF SEPTEMBER MEETING

The next meeting of the State Board will be held on Tuesday, September 9, 2004, at 1:30 p.m.

ADJOURNMENT

On a motion by Joan Beck, seconded by Susan Widerman, the Board meeting adjourned at 3:18 p.m.

The Board voted to hold a closed session in order to consult with staff and counsel about pending and potential litigation.