

DECEMBER 20, 2005
STATE BOARD MEETING
151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Thomas Fleckenstein, Vice Chairman
Joan Beck, Member
Bobbie Mack, Member
Susan Widerman, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Mark Davis, Assistant Attorney General
Donna Duncan, Director of Elections Management
Jared DeMarinis, Director of Candidacy and Campaign Finance
Terry Harris, Deputy Director of Candidacy and Campaign Finance
Nikki Trella, Election Reform Director
Jaimie Jacobs, Election Reform Deputy Director
Joe Torre, Voting System Manager
John Clark, Voter Registration Project Manager
Jessica Jordan, Director of Budget and Personnel
Michael Kortum, Chief Information Officer

Also Present: David Laning, Baltimore County
Henry C. Marshall,

DECLARATION OF QUORUM PRESENT

The meeting began at 1:32 p.m. Chairman Burger extended his best wishes for happy holidays to the board members, staff, and all citizens of Maryland. Mr. Burger announced it was his distinct pleasure to announce not only the presence of a quorum, but a full board. Mr. Burger introduced the two newest board members, Mr. Thomas Fleckenstein and Ms. Bobbie Mack. Mr. Fleckenstein, an attorney from Anne Arundel County, thanked Mr. Burger for his welcome and helping him get up to speed on important information. Ms. Mack, who previously served on the Board in 2004, thanked Mr. Burger for his welcome and noted that she was excited to be back.

APPROVAL OF MINUTES OF MEETING OF NOVEMBER 14, 2005

On a motion by Ms. Beck, seconded by Ms. Widerman, the minutes of the November 14, 2005, meeting were approved without further revisions.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

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ADMINISTRATOR'S REPORT

On behalf of the staff, Ms. Lamone thanked the Board for the holiday card and treats.

1. Staff Announcements

Ms. Barbara Spittler, the agency personnel officer, has announced that she is resigning in order to take a position with another State agency. Ms. Spittler's last day in the office will be December 21st. Her departure will obviously affect the speed in which personnel transactions can be completed, however, the staff is working hard to fill the position as quickly as possible.

Ms. Lamone introduced Ms. Barbara Whitfield as the new receptionist and added that she is a terrific addition to the staff.

Mr. DeMarinis and Ms. Harris are in the process of recruiting to fill the last vacancy left in the Candidacy and Campaign Finance Division. They are confident that the recruitment will be completed by the end of the month and the Division will be fully staffed and ready for the busy candidate filing and campaign finance reporting period.

Staff is also in the process of recruiting for a part-time contractual procurement officer and a full-time contractual security officer. Both positions will greatly assist with important agency tasks.

Mr. Goldstein, Ms. Jordan, and Ms. Spittler have been working with the Department of Budget and Management personnel staff to identify ways to expedite personnel transactions. One approach that they are beginning to implement is to have three of the larger counties provide a personnel liaison, who will receive detailed training and will be able to assist the SBE personnel officer with transactions affecting their respective counties. The initial counties that will be providing a liaison are Howard, Baltimore, and Anne Arundel Counties.

Ms. Beck wished Ms. Spittler well and thanked her for her contributions while working here. Mr. Burger also noted his appreciation to Ms. Spittler.

2. Candidacy And Campaign Finance

As of December 14, 2005, 70 candidates have officially filed for office.

The Candidacy and Campaign Finance Division completed two additional compliance trainings since the last report. This brings the total of trainings to five. So far, 150 people have attended. Two more classes have been scheduled for January.

After the Green Party case, Ms. Duncan, Mr. Goldstein, and Ms. Mary Wagner negotiated an agreement with the Green Party on how candidate filing should occur in light of the fact that the Court determined that the petition requirement was unconstitutional. The agreement was approved by the State Board and implemented for the 2004 election. Recently, Mr. DeMarinis sent out letters to all of the non-principal political parties

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requesting their input in this candidate filing process. The parties all remain in agreement with the procedures.

Mr. DeMarinis and Mr. Goldstein met with the attorneys of the Republican and Democratic parties and spoke with responsible officers of the non-principal political parties regarding the use of administrative funds. Administrative funds are funds donated to a political party solely for the purpose of supporting the operational activities of the party – such as office expenses, salary of staff, and rent. Administrative contributions are not subject to the contributor's contribution limits. The purpose of the meetings is to create an universal understanding and agreement of the permissible uses of those funds. The meetings were met with great success. Mr. DeMarinis and Mr. Goldstein will draft a memorandum outlining the agreement.

Mr. DeMarinis confirmed that today is the deadline for amendments for the 2005 Annual Report audits. As of December 14th, 70% of the committees have filed the requested amendments. Late fees will be assessed for committees that have not filed required amendments. This marks the first time that SBE has assessed late fees for failure to file an amendment.

The Winter Edition of the Campaign Finance Newsletter has been completed. The public should start to receive it by mid January.

3. Meetings

MWCOG

Ms. Mary Dewar attended the Metro Washington Council of Governments (MWCOG) meeting on November 18, 2005. Brian Hancock of the U.S. Election Assistance Commission discussed best practices in administration, management and security in voting systems, and provisional voting. The next MWCOG meeting will be January 20, 2006, at 10:00 am.

Governor's Commission on the Administration of Elections

Members of the Commission have visited the office twice recently. On November 15th, Ms. Lamone provided a briefing on Maryland's election procedures, voting system testing and security. The members were also given a demonstration of the new voter registration system, the voting system and electronic poll books. Mr. Goldstein provided the Commission with a briefing on provisional ballot procedures during the meeting on December 1, 2005. Mr. Burger presented the Commission with a briefing of the activities of the State Board of Elections and the views of Board members toward the impact several legislative initiatives has on SBE's mission.

House Ways and Means Committee

Ms. Lamone was asked to provide information to the Ways and Means Committee on early voting. Ms. Lamone's remarks focused on the administrative issues involved with implementing early voting. Mr. Goldstein provided an overview and explanation of the provisional voting issues contained in the vetoed Voter's Bill of Rights legislation.

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4. College Students As Election Judges

Ms. Trella attended a meeting with professors from six Maryland colleges and universities. The meeting was hosted by the University of Baltimore, one of the institutions that received federal funding before the 2004 election to recruit college students as election judges. The purpose of the meeting was to discuss ways to integrate election judge service into curricula and college life. A potential outcome of this effort could be a contact list for each college and university's political science department for local boards of elections to use in recruiting college students.

5. Help America Vote Act

Voluntary Voting System Guidelines

At its December 13th meeting, the U.S. Election Assistance Commission unanimously adopted voting system guidelines. The voluntary guidelines will take effect in December 2007, although states are free to adopt the guidelines sooner. After that date, all voting systems will be tested against the recently adopted standards. The version of the guidelines adopted by the Commission is not yet available for review, but is expected to be available by next week.

HAVA State Plan

Notice that the Maryland State Plan has been revised was published in the December 9th edition of the Maryland Register. The revised sections of the State Plan are posted on the website and are available upon request in alternative formats. The public comment period ends January 9, 2006, at which time the HAVA State Planning Committee will consider all comments and, if necessary, make any additional changes. The revised sections will be submitted to the Election Assistance Commission for publication in the Federal Register. The revised plan will be effective 30 days after publication in the Federal Register.

Grant Reports

Financial reports for the grant to improve accessibility for individuals with disabilities have been submitted to the U.S. Department of Health and Human Services. A narrative report highlighting the State's accomplishments and challenges in improving accessibility is due on December 31, 2005. This report period covers October 2004 through September 2005. A draft of the narrative report was provided to each board member for review and comment. All comments are requested by December 20th.

Trainings on HAVA's January 1st Requirements

Ms. Trella has been conducting trainings for the local boards of elections on the upcoming HAVA requirements and the relationship between the new requirements and the current federal identification requirement. As of December 14th, she has conducted trainings for seven local boards and will be finished with the trainings by January 4, 2006.

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6. Voting System

Implementation – Phase III (Baltimore City)

The Phase III equipment has arrived at the Diebold Warehouse. The IV&V staff is testing the voting units. All of Baltimore City's voting units have been delivered to the Baltimore City warehouse. The voting system team will coordinate the delivery of the GEMS servers and other peripherals (VIBS kits, UPS, and encoders) with Baltimore City staff.

The voting system team presented an overview of the implementation plan and services to Baltimore City staff (Neil Jones, Armstead Jones, and Abigail Goldman) on Tuesday, December 6th at the Diebold Warehouse. The presentation also included a demonstration of the Acceptance Testing process performed on Baltimore City's voting equipment. In response to Mr. Burger's questions, Mr. Torre noted that the presentation went well and that the Baltimore City staff is happy with the new voting system.

Additional Voting Units

The IV&V team is processing the additional voting units purchased for Baltimore, Montgomery, and Prince George's Counties. These voting units were purchased due to the increase in voter registration in those counties.

Phase I – Equipment Refresh

The Equipment Refresh activity is completed for Allegany, Dorchester, and Montgomery Counties. All voting units for Prince George's County have been sent to the Diebold service center and returned. The team will begin Acceptance Testing of Prince George's voting units on December 19th. This effort will be completed in January 2006.

Voting System Software Upgrade

The voting system team is evaluating the latest certified Ballot Station software (version 4.6.4) from Diebold Election Systems, Inc. This version of the software implements additional security features and is 2002 FEC compliant.

7. Voter Registration

The move of Baltimore City onto MDVOTERS on November 17, 2005, marked the beginning of Maryland's conversion to a HAVA-compliant statewide voter registration system. As of today, sixteen of the twenty-four LBEs are now live on MDVOTERS. These include four of the five mainframe LBEs: Baltimore City, Baltimore County, Montgomery County, and Harford County. The remaining LBEs are conducting data verification, the final stage before going live on the new system. All Local Boards are scheduled to be using MDVOTERS by December 23rd, achieving our goal of meeting the January 1, 2006 HAVA deadline.

Mr. Clark provided a brief description of MDVOTERS for the new Board members. Mr. Burger inquired what the most critical issues were with the project. Mr. Clark stated that at this point data migration and the variety of LBE reports have been a challenge for the

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project, but Saber had a special team working on the conversion. Mr. Clark explained that although 19 LBE's previously used the same system, each had individual customizations that needed special attention. Additionally each main frame LBE had unique situations to work through. Mr. Clark then noted that design and production of various forms and reports is currently underway with the Standards and Configuration Management Committees. Mr. Clark added that basic and advanced training went well after some initial connectivity issues were resolved. Mr. Clark hosts a Tuesday and Thursday morning conference call for Election Directors to address questions and share comments and has proven to be a helpful communication tool.

Ms. Lamone continued her report to advise that on November 7, 2005, a connectivity and performance test on the system was performed, with seven LBEs participating. (Montgomery, Baltimore City, Baltimore County, Cecil, Howard, Talbot, and Carroll). Based on reports from the LBEs during the testing, the system performed well in this first test. A second test, with all LBEs that are in the new system is scheduled for Wednesday, December 21, 2005. Mr. Clark noted that each LBE was required to designate a test liaison for the event.

A full Performance and Load Test will be conducted by our independent consulting firm, InfoSENTRY, the week of January 16. This test will require all 24 LBEs, the two data centers, and SBE, working with InfoSENTRY and Saber staff, to simulate the ability of the system to carry the expected loads during peak usage periods. The goal is to have as many as 200 users utilizing MDVOTERS simultaneously. A report on the performance of MDVOTERS under load will be provided to SBE following analysis of the test results by InfoSENTRY. Ms. Lamone added that similar testing in other states using the Saber software had gone well.

In addition to performance testing, MDVOTERS will undergo security testing conducted by a team from the University of Maryland. This testing will take place the first quarter of 2006.

8. National Center for the Study of Elections

The University of Maryland, Baltimore County has entered into a memorandum of understanding to create the National Center for the Study of Elections. Now that the Center has been formally established, Mr. Goldstein and Ms. Trella have been meeting with faculty to develop task orders for the projects to be completed by the Center. The first projects will include development of an on-line voter registration and polling place locator and improved campaign finance disclosure.

The study on the voting system and independent verification is proceeding. Ms. Lamone has been informed that the fieldwork for the usability portion of the study being conducted by the College Park team has been completed. They are now in the process of writing their report. The technical portion of the study is proceeding, but was delayed due to difficulty coming to terms between the University and the different vendors over non-disclosure and intellectual property issues. Staff has been working with the University on the survey.

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ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Davis had provided Board members with a written report, noting that litigation has taken up much of his time.

A certiorari petition in the Md. Green Party case was filed and is pending before the Court of Appeals.

A motion for summary judgment is pending for decision in the Hufnagel case.

SBE's brief to the Court of Special Appeals in Nader for President 2004 will be filed on or before January 16.

A recent mediation session for the Schade case did not result in any progress. Mr. Davis was busy reviewing documents produced by SBE and LBEs for the discovery phase of the Schade case. Two other cases were waiting for decisions on attorneys' fees. Some of the cases were inter-related; the outcome of one case will affect how other cases are determined.

Mr. Burger recognized that Mr. Davis had been very busy with the current cases and had no further questions at this time.

ADOPTION OF FINAL REGULATIONS

Ms. Trella noted that public comments had been received on three of the proposed regulations adopted by the Board in August 2005.

Regulation 33.05.03 (Dissemination of VRA Forms) – Three organizations commented on the proposed regulations amending this regulation. Ms. Trella recommended that the board take no action on this proposed regulation, since the proposed regulation may create a disincentive for individuals to become voter registration volunteers (VRV), as non-VRVs would be permitted to do the activity prohibited by the proposed regulation. In response to a question from Ms. Beck who voiced her concerns about private information being copied, Ms. Trella explained that VRVs are trained, but not sworn. Mr. Torre added that VRVs can be disqualified and have their certification revoked. Ms. Beck stated that no one in the voting process, paid or unpaid, should be able to copy information. Ms. Widerman agreed with Ms. Beck and wondered why people could not wait until the information eventually became public. Ms. Trella noted that some organizations use the information for other election-related purposes. Ms. Beck was concerned that the door would be open for use of the information for non-election purposes. In response to a question from Ms. Widerman about public awareness, Mr. Goldstein said that anyone turning information over to someone should be aware that they are giving up some privacy. Mr. Burger made a motion to accept the recommendation to take no action on the proposed regulation and propose an amendment to departmental legislation to prohibit all individuals who register voters from collecting certain information on the voter registration application, and Ms. Beck seconded the motion. The motion passed unanimously. Mr. Burger requested that Ms. Beck's concerns be included with the amendment.

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ADOPTION OF FINAL REGULATIONS (continued)

Regulation 33.09.06.05 (Local Boards – Implementation and Use) – A member of the Calvert County Board of Elections commented on the proposed changes to this Regulation. Ms. Trella noted that the current regulations establish a structure contrary to that established by §9-103 of the Election Law Article and recommended that the regulation be adopted as final. Mr. Burger stated that any voting system decertification must be announced publicly. Ms. Beck made a motion to accept the recommendation and adopt the policy that any voting system decertification must be publicly announced at a State Board meeting, and Ms. Widerman seconded the motion. The motion passed unanimously.

Regulation 33.15.02.05 (New or Changed Precinct) – A member of the Calvert County Board of Elections asked a question concerning this regulation, and Ms. Trella reported that she had previously answered his question.

Mr. Burger made a motion to adopt as final regulations the following additional regulations:

- 33.01.05 – Administrative Complaint Procedures
- 33.06.02 – Information Page (Candidate Petition)
- 33.06.03 – Signature Pages
- 33.08.04 – Definitions; General Provisions (Canvassing)
- 33.09.06 – Local Boards – Implementation and Use (Voting System Certification)
- 33.10.02 – AccuVote-TS
- 33.10.11 – Model ES-2000
- 33.10.36 – Mechanical Lever Machines
- 33.11.03 – Issuance and Return (Absentee Ballots)
- 33.15.02 – New or Changed Precinct

Ms. Widerman seconded the motion, and the motion passed unanimously. Ms. Trella confirmed that the regulations would become effective on January 2, 2006.

Mr. Burger recognized Ms. Trella for the great job she did with this difficult task.

OLD BUSINESS

There was no old business brought up for discussion.

NEW BUSINESS

Ms. Mack motioned for the nomination of Mr. Fleckenstein as Co-Chair of the State Board of Elections. Mr. Burger amended the motion to be for the position of Vice-Chair. Ms. Beck seconded the motion. Mr. Burger noted his appreciation for Ms. Mack making the motion and noted that he supported the longstanding tradition to have a vice-chair position filled by a board member of the minority party. Mr. Fleckenstein stated his appreciation and acceptance of the nomination. The motion passed unanimously and Mr. Burger

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NEW BUSINESS (continued)

extended his congratulations on behalf of the Board. Ms. Beck wanted to make sure that the new Vice-Chair knew how to contact the rest of the board members and that both new board members receive badges and credentials. Mr. Burger agreed and noted that the badges were an important way to identify board members to legislators, other state officials, and citizens. In response to Mr. Burger's inquiry, Ms. Duncan stated that new letterhead had been prepared and that she had hard copies for the board. Mr. Goldstein noted that the letterhead would need to be updated to reflect Mr. Fleckenstein's title as Vice-Chair.

SCEDULING OF JANUARY MEETING

The next meeting of the State Board will be held on Thursday, January 19, 2006, at 1:30 p.m.

ADJOURNMENT

The meeting was adjourned at 2:28 p.m.