

September 28, 2004

State Board Meeting  
151 West Street, Suite 200, Annapolis, MD 21401

Attendees: Gilles Burger, Chairman  
A. Susan Wideman, State Board Member  
Gene Raynor, State Board Member  
Joan Beck, State Board Member  
Linda H. Lamone, State Administrator  
Judith Arnold, Assistant Attorney General  
Donna Duncan, Director of Elections Management  
Mary Wagner, Director of Voter Registration  
Ross Goldstein, Director of Candidacy and Campaign Finance  
Pamela Woodside, Chief Information Officer  
Nikki Trella, Director of Election Reform  
Terry Harris, Deputy Director of Candidacy and Campaign Finance  
Jessica Jordan, Director of Budget and Personnel  
Joseph Torre, Director of Voting Systems and Procurement  
Patrick Strauch, Voting System Project Manager

Also Present: Bob Gladden, Wicomico County  
Fred Broccolino  
Woody Willing, Wicomico County Board of Elections  
Joe Bacchus, Capital News Service  
R. Steek, Gazette  
Dave Laning, Baltimore County  
Regina Holt, Howard County Voter  
Helen Kolbe, Howard County Voter  
Bobbie Mack  
Heidi Johnson, TrueVote Maryland  
Tom Stuckey, AP News  
Sara Harris, Montgomery County Board of Elections  
Jo McLaughlin  
Henry Marshall  
Nancy Dacek, Montgomery County Board of Elections  
Barbara Jackson, Baltimore City Board of Elections  
Neil Jones, Baltimore City Board of Elections

**DECLARATION OF QUORUM PRESENT:**

After establishing the presence of a quorum, Mr. Burger called the meeting to order at 1:10 p.m.

**APPROVAL OF MINUTES**

On a motion by Susan Wideman and seconded by Gene Raynor, the rewrite of the minutes of the July 7, 2004 meeting was accepted.

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On a motion by Joan Beck and seconded by Susan Widerman, the minutes of the August 10, 2004 meeting were approved with amendments.

Mr. Burger commended Janey Hegarty for her work putting together the minutes.

### **ADDITIONS TO THE AGENDA**

Ms. Widerman requested that an issue concerning the Polling Place Guidelines Memorandum sent on 9/17/2004 be added to the Agenda.

### **ADMINISTRATOR'S UPDATE**

#### New Staff

Ms. Lamone introduced Jessica Jordan, who is the new Budget and Personnel Director, and Marcella Black, who is a contract employee assigned to oversee IT security.

#### Homeland Security

Ms. Lamone informed the Board that the Governor's office has convened a workgroup consisting of Homeland Security officers, emergency management personnel from State and local government and many of the local election officials. The purpose of the workgroup is to establish plans to deal with an emergency (such as a manmade or natural disaster) on or close to election day. Some of the actions taken by staff include providing voting system deployment plans and SBE disaster recovery plans. Ms. Lamone also noted that she has been participating in a workgroup on the national level that is being spearheaded by the Deputy Director of Homeland Security. This indicates that everyone is focused and paying attention to this issue. Finally, Ms. Lamone noted that this security effort has been very conscious of not frightening voters. Mr. Burger noted that it is his opinion that voters would take comfort in the knowledge that these different groups are coordinating to provide a secure election.

#### Voting System

Ms. Lamone reported that the documentation for ballot proofing and logic and accuracy testing is complete. The documentation for canvassing and recounts is being finalized along with a new document for election day processes. The remaining documentation should be completed within the next 10 days.

The staff participated in conducting a parallel test as part of the public demonstration of the logic and accuracy testing for the Prince George's County Special Primary Election. Staff also conducted a parallel test of one voting unit from Prince George's County on the day of the Special Primary Election (a report from Ross Goldstein on parallel testing was included in the meeting materials). Finally, staff observed the election and the pilot of an electronic poll book, a device that takes the place of the precinct register. Ms. Lamone noted that she is waiting for a report on the electronic poll book from Robin Downs Colbert, Election Director for Prince George's County.

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Ms. Lamone reported that the software upgrade and the end-to-end testing on all the voting units in the State are complete and ahead of schedule. Also, optical scan ballots have been approved and are ready for printing. In addition, the audio ballots are finalized and all databases have been delivered to the counties. Finally, Ms. Lamone noted that other supplies have been ordered and delivered, including provisional ballot applications, tamper tapes and various signs.

A voting system video that the counties can use on election day has been developed. This video is designed to be played on a continuous loop at a polling place. In response to questions from Mr. Raynor, it was explained that the video was developed as part of the voter outreach services provided under the Diebold contract.

Ms. Lamone reported that Diebold county technicians have all been deployed and that the supply orders from the counties for memory cards, access cards, supervisor cards and encoders have all been delivered.

Ms. Lamone stated that staff has been attending randomly selected judges training classes. In addition, staff has been working on completing site surveys and modem testing.

Ms. Lamone pointed out that in the packet of information is a document that provides a comparative analysis of all the recently published best practices and security reports.

Ms. Lamone then went on to discuss the voting system project support provided to various counties. For example, in Montgomery County, SBE staff supported the modem hardware installation. In Prince George's County, SBE staff helped analyze the modem issue that arose the night of the special election.

#### Overseas Absentee Ballots

Ms. Lamone informed the Board of various issues concerning overseas absentee ballots. First, Ms. Lamone indicated that a meeting was held with the United States Postal Service representatives and State and local election officials. The USPS representatives informed the local election officials how to sort mail for overseas and military voters to expedite delivery. Ms. Lamone also noted that staff is providing assistance to the local boards that are taking advantage of a new Department of Defense e-mail program for delivery of ballots to military personnel who are stationed overseas. The local boards participating in this project are Baltimore, Caroline, Charles, Kent, St. Mary's, Somerset, Washington, and Wicomico.

#### Campaign Finance

There was a campaign finance seminar held at the State Board office on September 15, 2004. There were 25 people in attendance.

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Ms. Lamone also reported that campaign finance staff went to Talbot County to provide training on ELECTTrack and to provide data entry assistance.

The next campaign finance report, the Pre General Report, is due in mid-October. Ms. Lamone noted that this was the same time as the close of voter registration.

#### HAVA Disability Funding

Ms. Lamone noted that \$156,000 of HAVA disability funding was recently received. The money will be used to purchase temporary fixes (such as door handles and ramps) to polling places in order to make them accessible.

#### Voter Registration

Ms. Lamone reported that the staff has been conducting audits of the voter registration processes at various counties. So far, the staff has visited Prince George's County, Baltimore City, Carroll County, and Charles County. Howard County will be next. Ms. Lamone noted that Howard County recently hired Betty Nordaas to serve as the new election director. Ms. Nordaas served for many years as a manager with Verizon.

Ms. Lamone reported that the staff recently did a database match between the Statewide voter registration database and a database from the Motor Vehicle Administration that represented voters who had been to MVA between 6/03 and 6/04 and had indicated that they wanted to register to vote (additional information was provided in the meeting materials). Names of individuals on the MVA database who could not be found on the voter registration database were sent to the appropriate counties. SBE Staff sent 14,000 VRAs to Prince George's and Montgomery Counties, so that they could contact these individuals and attempt to get them registered.

Mr. Raynor expressed concerns about the availability of voter registration forms for groups conducting registration drives. Ms. Lamone and staff stated that there are plenty of forms in stock and that they were not aware of any shortage. Mr. Raynor and Mr. Neil Jones from the Baltimore City election office stated that there was a shortage and that forms were not available for a group in the City.

Ms. Lamone then continued by discussing the voter registration system RFP. She noted that the closing date is on Monday and all questions that have been received from vendors have been answered.

#### Protest Voters

Ms. Lamone stated that the next item on her report is the issue regarding instructions to election judges about how to handle protest voters. However, since this subject was added to the meeting agenda as a new item, she offered to defer to later in the meeting. Mr. Burger decided to have the discussion at this point in the meeting.

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Mr. Woody Willing from Wicomico County Board of Elections was invited to express his concerns about the instructions on how to handle protest voters. The instruction in a memorandum sent by staff was to provide information to protest voters that they are not eligible to vote a provisional ballot. However, if a protest voter persists in asking for a provisional ballot, the election judge could issue one, but the canvassing board would reject it. Mr. Willing felt that this approach would cause more confusion for both judges and voters and be overly time consuming. Mr. Willing also expressed his objection to the polling place notice that states that the local board of canvassers “may” reject the provisional ballot. Mr. Burger noted that ultimately it is the canvassing board’s decision. However, Mr. Willing again asserted that this would create undue confusion and possibly an inconsistent approach among the counties. Mr. Burger then asked a member of the staff to explain the memorandum.

Mr. Goldstein stated that he, Nikki Trella, and Mr. Burger had discussed the issue prior to the memorandum. Mr. Goldstein noted that the memorandum was trying to accomplish several goals. One goal was to send a strong message that provisional voting was not an optional voting method for protest voters. However, another goal was to balance that with the concern for election judges and not wanting to put them in a position where they will have to argue or deal with disgruntled protestors. Accordingly, the idea was to provide sufficient warning to protest voters, and then let them make an informed decision on whether to continue with their protest or cast a ballot on a voting unit. Mr. Goldstein also pointed out that the reason the notice for the polling place indicated that the provisional ballot “may” be rejected is because technically it was up to the canvassing board to make the determination. Howard County Board members had previously raised this issue with Mr. Burger and staff.

Based on the information presented, the Board discussed this issue and then moved to establish a clear policy that a duly registered voter whose name is on the precinct register may not be issued a provisional ballot. The Board also directed staff to change the polling place notice to reflect this policy.

#### Election Judges – 17-Year-Olds

Ms. Lamone then continued with her report by noting that the agency has received information that 17-year-olds cannot serve as election judges due to State labor law restrictions prohibiting minors from working more than 12 hours. Staff applied to the Commissioner of Labor and Industry for a waiver, but this was denied.

#### **ATTORNEY GENERAL’S REPORT**

Ms. Arnold updated the Board on the status of the *Schade v. SBE* lawsuit, originally filed on April 21. The suit sought implementation of voter-verified paper audit trail or return to optical scan voting system for November 2<sup>d</sup> and subsequent elections. The plaintiff’s request for a preliminary injunction was heard on August 25-27 in the Circuit Court for Anne Arundel County, and the State won. An appeal was filed in the Court of Appeals.

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The case was argued before the Court of Appeals on September 14, and the State won again. However, Ms. Arnold did note that the case is still alive and could be resumed after the election.

Next Ms. Arnold discussed the Nader lawsuit. That case involved a challenge to the State's denial of the Populist Party's petition. The State won the case in the Circuit Court for Anne Arundel County, but the Court of Appeals overturned that ruling. Ms. Arnold pointed out that the Court of Appeals did not find fault with any action on the part of the agency; rather, it determined that the requirement that voters only sign the petition page for the county in which they reside was unconstitutional for a statewide petition.

In the case of *Maryland Green Party v. Maryland Board of Elections* (Circ. Ct. for Anne Arundel Co.) the plaintiffs filed a Petition for Attorneys' Fees and Costs (\$338,000 plus) on June 15. According to Ms. Arnold, the case is still undecided.

Finally, Ms. Arnold noted that a formal opinion of the Attorney General's Office was issued on the 13<sup>th</sup> of September. This opinion was in response to a question about whether people who own property in Ocean City as well as in other areas of the State could transfer their voter registration to Ocean City. The answer is that they can, but by doing so they are declaring that Ocean City is their primary residence. Mr. Raynor noted that residency has long been a problem. According to Mr. Raynor, the reason that residency is required is to address the concern that college students in a town can all go down and register to vote and then overwhelm the election in that town.

## **CONTROL AND CUSTODY OF DEMONSTRATION UNITS**

Ms. Lamone explained that a couple of weeks prior to the meeting, a voting unit was checked out from Montgomery County by a former election judge who was also a member of TrueVote Maryland. The unit was to be used for demonstration purposes. It was reported that a person using that unit during one of his demonstrations had a problem. This prompted Montgomery County to request that the unit be returned. The man refused. After legal action, the unit is now in the custody of the State Police. The matter is being treated as a criminal matter.

Ms. Lamone noted that Montgomery County and Allegany County are the only jurisdictions that allow voting units to be taken from the board's custody without an election official accompanying the units. Ms. Lamone noted that Allegany limits this practice to members of the League of Women Voters. Ms. Dacek, Chairman of the Montgomery Board of Elections, noted that her Board is in the process of reviewing the current policy. At a minimum they will provide a document for people who receive demonstration units to sign that clarifies the permissible uses.

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Ms. Beck asked whether this incident created any security concerns. Ms. Lamone answered that it did not raise any security concerns, since the demonstration unit did not have any of the security enhancements on it.

Neil Jones, Deputy Director of the Baltimore City Board of Elections, reported that Diebold voting units had been found in Baltimore City. Joe Torre stated that the voting units found in Baltimore were not part of the State's inventory. Mr. Torre noted that all of the State's equipment had recently been checked and everything is accounted for.

## **DEPARTMENTAL LEGISLATION**

Next the Board considered four proposals for departmental legislation that were submitted by the Maryland Association of Election Officials. Ross Goldstein explained that the first proposal would to authorize a pilot program for the use of an electronic poll book and that it was not necessary, since a change to the law was not needed to authorize this activity.

The second proposal would require all voters to show identification at the polls. Mr. Burger noted strong support for this proposal from Harford County Board of Elections, based on that board's contention that it would be administratively easier to request identification from all voters than only from first time voters who registered to vote by mail. Mr. Burger also stated his continuing support for this proposal. Mr. Raynor noted his disagreement with this proposal stating his concerns that it would cause problems and hardships on voters. Ms. Arnold noted that this type of legislation is not without problems and potential lawsuits. There has been a lot of litigation in the past over whether voter identification requirements are justified (there is a long history of legal problems because identification requirements were historically used as a means of disenfranchising black voters). Ms. Arnold further stated that the burden placed on voters has to be balanced against the problem that you are trying to solve. The main problem in prior challenges to ID laws is that black voters are more likely than white voters not to have the kinds of documents acceptable for identification. However, this may not still be the case today, since HAVA permits a broad range of documentation that can serve as ID (such as utility bills). Mr. Burger then made a motion to accept the proposal for departmental legislation. Ms. Widerman seconded the motion. Motion passed, with only Mr. Raynor in opposition.

The next proposal was to eliminate the reasons for voting by absentee ballot. Mr. Goldstein explained that this proposal would expand the opportunity to vote absentee and provide an outlet for protest voters who prefer to vote a paper ballot. Mr. Burger stated his view that voting should occur in the polling place. Absentee voting should only be used in case of hardship where the person cannot go to the polling place. Mr. Burger also noted that there is greater risk of fraud with absentee ballots. Mr. Raynor noted his disagreement. Mr. Burger surveyed the members and determined that the majority

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disagreed with the proposal and therefore declined to accept it as departmental legislation.

The last proposal dealt with the permissible use of voter registration data. Specifically, the bill would prohibit a person who receives a copy of the voter registration list from using the list for the purpose of publicizing voter history (which was apparently proposed in Ocean City). The Board declined to accept this proposal as departmental legislation due to its belief that voter registration records should remain public records.

## **REGULATIONS**

The first proposed regulation amends 33.07.04 to provide that people cannot have computer equipment (including laptops and PDAs) in the polling place. The reason for this restriction is because some computer equipment can also be used as communication devices that are already prohibited from the polling place. Also, there is a security concern with having computer equipment in a polling place. On a motion by Mr. Burger, the board unanimously approved the proposed regulation.

The next proposed regulation accomplishes two things. First, it generally removes the references to voting systems that are no longer in use in Maryland. Second, it modifies the recount options available to a person contesting an election. The options test different areas of the voting system. Ms. Trella explained the recount options for the DRE voting units. The first option is to manually re-tabulate the totals reports that are printed from each voting unit on election night. The second option is to reload all of the memory cards. The third option is reprinting the totals reports again, but using the unit archive memory, not the memory card. The final option is printing the ballot images and then doing a manual recount of those ballots. On a motion by Mr. Burger and seconded by Ms. Widerman the Board unanimously approved the proposed regulation.

The final regulation was a proposed change to the administrative complaint procedure. Ms. Trella explained that a version of the regulations was submitted at the last Board meeting. The Board deferred action. Ms. Trella has made changes to the regulations based on a conversation between her, Ross Goldstein, and Mr. Burger. Specifically, the regulations now state that if a hearing is related to a policy or procedure of the State Board, the Administrator is required to designate someone who is not an SBE employee to serve as hearing officer. The other changes to the regulation are minor changes to the process of the hearing and clarification of certain procedures. Mr. Burger decided to table the issue. He noted that the two issues that he and the Board members were concerned about were how to handle potential conflicts of interest and the ability of someone to appeal a decision of the hearing officer. Ms. Arnold reiterated her interpretation of HAVA that the intent of the legislation was for the administrative hearing to be a conclusive administrative process, without appeal to the courts. Mr. Burger then reiterated his concern about not allowing any rights of appeal. Ms. Arnold responded that the Board could create a right of appeal to the Board. Mr. Raynor

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expressed his preference to have all complaints heard directly by the board, not the administrator. Mr. Burger then reasserted his desire to table the discussion, stating he did not feel that they were prepared to vote on the regulation. Mr. Burger asked that the Board review the regulation before the next meetings so that they could all provide comments.

### **PARALLEL TESTING**

Mr. Goldstein discussed the report he submitted to the Board regarding parallel testing. First, Mr. Goldstein reviewed the testing that occurred during the Prince George's County Special Primary Election. A parallel test conducted during the public demonstration was held at the Prince George's County warehouse on Friday, September 3, 2004. First, the Prince George's County Board Members filled out 50 paper ballots. Then a member of the public randomly selected one voting unit that was unsealed, set up and prepared for voting. The board members, SBE staff, and the public formed teams of readers, hand talliers, and unit voters. The 50 ballots were cast on the unit and the results were simultaneously hand tallied. A totals report was produced from the voting unit that corresponded exactly to the results created by the hand tally. Then on election day, September 14<sup>th</sup>, one unit, randomly selected from the county, was used. The unit was set up pursuant to the same pre-election procedures followed by election judges. Then beginning at 7:00AM voting began using ballots randomly filled out by SBE staff the day before. All of the votes cast on the voting unit were recorded by video equipment in case the person voting on the voting unit made a mistake. A total of 320 votes were cast on the voting unit. The results corresponded exactly to the results created by the hand tally.

Mr. Goldstein went on to explain that since the parallel test at public demonstrations cannot be done in every jurisdiction, staff had selected six counties in geographically diverse locations in which to conduct the parallel test. Montgomery County was selected for the election day parallel test. A member of the League of Women Voters will select four voting units from Montgomery County. Mr. Goldstein noted that the League, which had approached the staff about providing assistance during the election, would also mark the paper ballots to be used for the election day parallel test. Mr. Burger thanked Montgomery County for its participation.

### **MODEMING ELECTION RESULTS**

Mr. Burger reminded the Board members that they had established a policy, based on a recommendation from staff, that accumulator units could not be removed from a polling room for the purpose of modeming results. Sara Harris was asked to address the Board and express the concerns raised by the Montgomery County Board. Ms. Harris stated that, while they agreed with the State Board's desire to ensure a transparent process, she felt that allowing the accumulator unit to be moved would not cause a disruption in the transparency of the process, since the public, including challengers and watchers, could still witness that process. Ms. Harris also noted that not allowing the accumulator unit to be moved will greatly diminish the number of polling places that will be able to modem

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results. Mr. Raynor expressed his opinion that there should not be any building used for a polling place that restricts any part of the facility for any part of the orderly conduct of the election. After additional discussion, the Board developed a policy that would allow for an accumulator unit to be moved to another room for the purpose of modernizing results, provided that the public is able to witness the entire process. In addition, before moving the accumulator unit, a totals report will have to be printed and posted and then, when the unit returns to the room, another totals report will have to be printed in order to demonstrate that no changes occurred. On a motion by Mr. Burger and seconded by Ms. Widerman the Board unanimously adopted this policy.

### **ADMINISTRATIVE CLOSURE OF CAMPAIGN ACCOUNTS**

Terry Harris asked the Board to consider administratively closing nine campaign accounts. Ms. Harris explained that the closing of the nine accounts is a recommendation of the staff and the State Prosecutor's office, based on the fact that the accounts are not active but cannot be closed, due to the fact that there are no officers available to close the account, or due to some other technicality. Ms. Beck moved to accept the recommendations for administrative closure submitted by Ms. Harris. Mr. Raynor seconded the motion and the Board unanimously granted the closures.

### **AGE OF VOTER REGISTRATION VOLUNTEERS**

Mr. Burger reported he received a letter from the Global Developmental Services for Youth organization requesting an explanation on the prohibition of youths under 18 years old to serve as voter registration volunteers. Ms. Wagner explained her research into the issue. She initially assumed that they had to be 18 in order to sign the oath. However, there is no such age requirement for the oath. Ms. Wagner also checked with prior staff to determine the history of this requirement. However, even this did not provide a definitive answer as to why the age had been set at 18. Perhaps it was to ensure mature and responsible individuals were serving as volunteers. However, Ms. Wagner did note that several older volunteers have been less than responsible. Nonetheless, Ms. Wagner did note a variety of opportunities, including student mock-elections, for young people to be involved with the upcoming election. Ms. Widerman suggested allowing the teenagers to take part in some other aspect of registration. Ms. Wagner stated that this would likely be too close to the duties of the volunteers. The issue of how old a volunteer has to be under the regulations (either 18 years old or old enough to register to vote, which could be 17) was discussed. Mr. Burger asked Ms. Arnold for a legal opinion on whether the regulations could be made to track the voting age language of the law. Mr. Burger thanked Satia Koroma and her colleagues from the Global Developmental Services for Youth organization for her drive, initiative and energy in supporting efforts to encourage young people of voting age to register to vote.

### **OLD BUSINESS**

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Mr. Burger questioned staff as to whether there were any polling place changes that the Board had to approve. Ms. Wagner stated that all of the changes had already been approved.

Ms. Widerman had a question about the status of the voting system documentation. The response was that four were completed and in the process of being reviewed by the documentation committee, and there was one final document that was still being finalized.

### **NEW BUSINESS**

Fred Broccolino asked to address the Board about a campaign finance matter involving the Baltimore City Democratic Central Committee. The question was whether the treasurer's address had been properly updated so that she was able to get communications and notices from the State Board. Staff had confirmed to Mr. Broccolino prior to the meeting that the address had been updated. Mr. Broccolino also indicated that the committee could use more time in responding to late fees. Mr. Goldstein stated that generally once the matter is referred to the State Prosecutor, any request for extensions should be directed to that office. The Board declined to take any action.

### **SCHEDULE OF OCTOBER MEETING**

The Board set the October meeting for Tuesday the 26<sup>th</sup> at 1:30 p.m.

### **ADJOURNMENT**

On a motion by Ms. Widerman, seconded by Mr. Raynor, the meeting adjourned at 4:30 p.m.