

MAY 24, 2007

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MD 21401

Attendees: Robert L. Walker, Chairman
Bobbie Mack, Vice Chairman
Joan Beck, Member
Andrew V. Jezic, Member
Linda Lamone, Administrator
Mark Davis, Assistant Attorney General
Ross Goldstein, Deputy Administrator
Mary Wagner, Voter Registration Director
Jared DeMarinis, Candidacy and Campaign Finance Director
Michael Kortum, CIO
Nikki Trella, Election Reform Director
Jaimie Jacobs, Election Reform Deputy Director
Bob Murphy, Project Manager Electronic Pollbooks
Roger Stitt, Voter Registration Division
Paul Aumayr, Voting System Division
Karen Simpson, Deputy, Candidacy and Campaign Finance Division

Also Present: Mary Kiraly, MD Election Integrity Coalition
Charles Thoman, State Board of Elections appointee
Elizabeth Proctor, Treasurer for Friends of Jim Proctor Committee
Lynne Rosenman

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:34 p.m. and declared that there was a quorum present.

APPROVAL OF THE APRIL 26th BOARD MEETING MINUTES

Ms. Mack asked for two corrections. First, Ms. Mack, not Mr. Walker, should be attributed as having made the suggestion (on page 10) to include the Baltimore City website on the *2007 Absentee Ballot Application*. Second, correct of a spelling error (on page 11).

Ms. Mack made a motion to approve the minutes as amended, and Mr. Jezic seconded the motion. The minutes of the April 26, 2007, board meeting, as amended, were approved unanimously.

Mr. Walker then welcomed Charles Thoman, a new board member appointee, to the meeting.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

ADMINISTRATOR'S REPORT

1. Personnel

Ms. Lamone reported that Jessica Jordan, Director of the Budget and Personnel Division, has announced that she will be leaving the State Board of Elections effective July 16th. Jessica has been a tremendous asset to the agency. In addition to the excellent work on budget and personnel issues, Jessica has been a true team player – as evidenced by her willingness to run parallel testing during the 2006 election. Ms. Lamone thanked Jessica for her service and wished her well on her new endeavors. Ms. Lamone noted that a potential replacement has been identified. The goal is to have the new person in place by the beginning of July so Jessica can spend her final two weeks training her replacement.

Ms. Lamone also welcomed Joanne Blackwell who is filling the personnel position responsible for payroll, retirement, and benefits. Joanne comes to SBE from the Maryland Higher Education Commission and has worked with the State for many years in personnel. Ms. Lamone stated that with this new hire, Jackie Bryley's expertise, and Ms. Jordan's oversight, SBE now has a very strong and professional personnel division.

2. Meetings

Lessons Learned

Ms. Lamone reported that on May 16, 2007, the fourth lessons learned session was held. The topics covered during the meeting related to electronic pollbook and voting system issues. Specifically, the following issues were discussed:

- Whether to continue to produce an electronic pollbook quick reference guide for election judges to use;
- Logic and Accuracy Testing;
- Best practices for equipment setup, downloading data, and use of pollbook reports;
- Electronic pollbook data display issues;
- County technicians provided by Diebold;
- Improvements to the *Conducting the Election Guide*;
- Best practices for transporting equipment, making sure equipment assignments are correct, and receiving supplies back on election night; and
- New procedures for memory card chain of custody.

Minutes from the meeting are being prepared and will be provided to the members once they are complete.

Biennial

Ms. Lamone notified the Board that the biennial meeting will be held on October 19th at the Annapolis Doubletree hotel. Staff has notified the local boards of elections.

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UMBC Class

Ms. Lamone reported that on May 9th, she was a guest lecturer at Professor Alan Sherman's computer science class at UMBC. The class specifically focuses on election technology issues. She was asked to speak about the challenges of running elections. She provided the class with information to give them a perspective on the scope of election day challenges, voting system security measures, and an overview of the new voting system legislation.

3. Voter Registration

MDVOTERS

Ms. Lamone reported that the Voter Registration Division is prioritizing software development issues to make sure items necessary for the Baltimore City election are completed and included in the July 16th software release. Issues that are less urgent will be addressed in the November 2007 release.

Voter Registration Application

Ms. Lamone reported that due to legislative changes regarding the registration of convicted felons and the Populist and Constitutional parties losing their recognized status, the voter registration application has been changed and will be sent to the printers by Tuesday, May 29. Ms. Mack asked whether staff had done or planned to do any outreach for convicted felons. Ms. Wagner stated that no outreach had been done or is planned, but staff is working with different public interest groups that are conducting outreach. Ms. Wagner stated that given the fact that there are a number of public interest groups that have planned outreach activities, providing support to these efforts is the best use of agency resources.

Notice to Voters

Ms. Lamone reported that voters of the Populist and Constitutional parties will be sent a letter informing them of their party status and requesting they select another recognized party or register as "unaffiliated." Mr. Walker asked how many letters were being sent. Mr. Stitt responded that a total of 880 letters were sent – 600 to Constitution Party voters and 220 to Populist Party voters.

Audits

Ms. Lamone reported that audits of voter registration data is ongoing with the results being sent to the Local Boards for correction. In response to a question by Mr. Walker, Mary Wagner reported that the audits are being conducted by Roger Stitt and Janet Smith. They are looking at voter registration records to determine whether the appropriate status was assigned to the registrant and to assess quality of the data entry.

Interface

Ms. Lamone reported that the Motor Vehicle Administration (MVA) received a proposal from Saber to develop an interface allowing the SBE to receive all transactions done by registered voters. Unfortunately, due to budget constraints and the lack of available staff, MVA is unable to move forward with this interface. SBE is currently working on developing a back up plan, which will allow SBE to receive this information. Mr.

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Walker asked about the cost of the Saber proposal. Mary Wagner responded that the proposal was approximately \$670,000.

High School Registration Drive

Ms. Lamone reported that, in conjunction with the Prince George's Board of Education, SBE supplied all graduating high school students a certificate of recognition for their efforts in registering to vote. Ms. Lamone thanked Janet Smith for coordinating this effort. More than 1,500 certificates were presented. Ms. Beck hoped that this type of project could be conducted in other counties.

4. Help America Vote Act

Standards Board

Ms. Lamone reported that the EAC's Standards Board was asked to review a draft report entitled "Best Practices for Effective Designs in Election Administration." Under the Help America Vote Act, the EAC was required to identify best practices for ballot design and voter information. To meet this requirement, the EAC contracted with Design for Democracy, a project of the American Institute of Graphic Artists (AIGA). Comments from Standards Boards' members (of which Nikki Trella is one) were due by Tuesday, May 22, 2007. The draft report and comments from Standards Board members are available at www.ebp4.us/document-review/best-practices. Ms. Lamone noted that the report represented a good start, but there were some shortcomings. Overall, Design for Democracy is an excellent project. We have used a related designed firm to improve SBE forms and information for the public and the election judges.

Federal Legislation: H.R. 811

Ms. Lamone reported that the House Administration Committee voted 6-3 on H.R. 811 - Voter Confidence and Increased Accessibility Act of 2007 (also known as the "Holt Bill"). For Maryland, this legislation would require by November 2008 the implementation of an optical scan voting system since touchscreen voting systems without a voter verified paper trail would be prohibited. The bill also requires states to conduct independent "audits" that meet specific and detailed provisions. However, the proposed audit is not a true audit, rather it is simply a recount. Based on conversations with legislative staff, it appears that the momentum for this legislation has slowed, although there continues to be strong support for this legislation. Mr. Walker asked whether any members of the Maryland delegation were active supporters of the legislation. Ms. Lamone stated that no one in the Maryland delegation was a prime proponent of the legislation. Ms. Lamone also noted that MAEO representatives met with every member of the delegation to discuss election administration concerns.

Election Judges' Manual

Ms. Lamone reported that work continues on the election judges' manual for the 2007 Baltimore City Election and the 2008 Presidential Election. The 2007 manual is on track to be completed and submitted to Baltimore City by June 1, 2007, the deadline requested by the City Board of Elections. The Baltimore City Board of Elections will be using the University of Baltimore's Schaefer Center for Public Policy to conduct the election judges' training for the upcoming election.

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Voter Outreach

Ms. Lamone reported that Mary Heath is working with the Baltimore City Board of Elections to coordinate advertising and voter outreach events for the upcoming election. They anticipate purchasing billboards and bus shelter, transit, and mall ads.

5. Candidacy and Campaign Finance Division

Candidate Filings

Ms. Lamone reported that no new candidates have filed for office. So as of May 18, 2007 only 4 candidates have officially filed for office.

Electronic Filing

Ms. Lamone reported that the Candidacy and Campaign Finance Division is in the process of updating the file format specifications for electronic filings from outside vendors. The changes in the file format will reflect the legislative changes and all of the improvements made to ELECTTrack EFS. This will create a uniform filing system. In addition, the Division has reviewed with the IT staff all of the importation problems with outside vendor software that occurred in the 2006 election. Those problems have been addressed with the updated file format specifications. It should be completed by the end of next month.

The Division has delayed the planned mass mailing to all the committees from mid-May to first week of June. This was due to the need to conduct more usability tests for ELECTTrack EFS 5.0 on different operating systems. As of May 23rd, EFS 5.0 has been successfully tested on Windows 98, 2000, XP, and NT. There are still remaining issue to resolve with Vista, Microsoft's new operating system.

6. Voting System

Post Election Maintenance

Ms. Lamone reported that local boards of elections are working on their post election maintenance activity on the voting system equipment. This process ensures the voting equipment is prepared for the next election. Five counties have completed their post election maintenance. The five counties are Baltimore City, Baltimore County, Carroll, Caroline, and Washington. Ms. Mack asked whether there is a deadline for LBEs to complete post election maintenance. Ms. Lamone responded that there is a maintenance schedule that must be followed.

Baltimore City Election

Ms. Lamone reported that the voting system team distributed a pre-election questionnaire to Baltimore City Board of Elections. The City responded to the questionnaire and the voting system team is working with them to provide the requested support and election supplies for their mayoral primary and general elections.

Security

Ms. Lamone reported that the voting system team continues to work on updating our agency's Information Systems Security Plan (ISSP). The team is currently reviewing the

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existing rules of security for employees, election judges, and individuals with access to voting system components.

Classes

Ms. Lamone reported that the voting system team along with members of the SBE-IT department evaluated a class that covered creating and updating an election database. This class will be offered to the local boards to support municipal and special elections. All statewide elections will still be created and maintained by SBE. The class will be offered to the LBEs over the summer. The voting system division is working with the LBEs to schedule these classes in a convenient location and time.

7. Information Technology

Training & Certification

Ms. Lamone reported that, in an effort to maintain the highest of technical standards, the IT division has completed the following training:

- Natasha Walker – Adobe Illustrator
- Thomas Queen – Microsoft Server 2003
- Stacey Johnson - Network Configuration (Network Certification achieved)
- Natasha Walker/Kurt Snyder – Web Accessibility
- Vincent Omenka/Natasha Walker – GEMS, Ballot Production

Web Accessibility

Ms. Lamone reported that the IT division has been working on upgrading the website to meet the latest National Accessibility standards. Staff recently met with a representative of the audit team and developed a plan to provide the latest improvements. Natasha Walker has already completed many of the changes and more are in progress.

Technical Upgrades

Ms. Lamone reported that SBE's Email application has been upgraded with the latest application improvements including fault tolerance. Additionally staff is in the process of installing an additional hard storage device.

All Oracle applications have been upgraded to version 10g.

Recent network upgrades with DBM and State Archives have been completed to remove outdated and troubled connections for Internet and Network Maryland access.

New Actions

Ms. Lamone reported that SBE is working with the other State technical departments and the Office of Information Technology to improve the State's IT Disaster Recovery procedures. New and upgraded back-up facilities are being developed along with additional plans and procedures. Training will be on the agenda for all State election employees next quarter.

8. Additional Issues

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Ms. Lamone reported that the Governor's Appointment Office has indicated that they will complete all local board appointments by the end of next week.

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Ms. Lamone provided the members with a copy of the tentative agenda for the MAEO June meeting. She welcomed the members to attend as much of the conference as their schedules allow. At a minimum attendance on Monday would probably be the most worthwhile and informative.

Ms. Beck raised a concern regarding the reported updates to the vendor file format for campaign finance filing. Ms. Beck noted her concern that treasurers who use a vendor to file their campaign finance reports will not understand that they, not the vendor, are liable for the reports. Mr. DeMarinis responded that the use of vendors has been allowed since the beginning of electronic filing. The work on the file format is just an update to reflect changes made to certain filing procedures. Treasurers are informed of their responsibilities and that this had not been a problem thus far.

WAIVER OF CAMPAIGN FINANCE REPORT LATE FEES

There were a total of eleven late fee waiver requests and four requests for reconsideration of a denial of a late fee waiver requests presented to the Board by Mr. DeMarinis. Present at the meeting was Ms. Elizabeth Proctor, treasurer of Friends of Jim Proctor. Ms. Proctor was allowed the opportunity to present her case for a reconsideration to the Board. Mr. DeMarinis stated that the agency's ELECTTrack database did not have any records of the committee's filing at the date claimed nor did the *Transmittal Sheet* show proof of the transmission. Ms. Mack inquired when SBE received the Transmittal Sheet and if the committee had prior late fee offenses. Mr. DeMarinis replied that the *Transmittal Sheet* was received on January 17 and the committee was last delinquent on filing in 1998. Upon a motion by Ms. Mack, seconded by Mr. Jezic, the Board unanimously granted the requested waiver of the late fees assessed against the officers of the Friends of Jim Proctor.

The Board reviewed the late fee waiver requests from the following campaign finance entities and the recommended action by the State Administrator:

1. Maryland Veterinary PAC – grant the full request, applicable for both officers
2. District 34A For Marla Posey-Moss - grant the full request, applicable for both officers
3. Citizens for Ben Perricone - grant the full request, applicable for both officers
4. Citizens for Scott Bowling –waive the first late fee only, applicable for both officers
5. Citizens for Tim Caldwell - waive the first late fee only, applicable for both officers
6. Friends of Wayne Definbaugh - waive the first late fee only, applicable for both officers
7. Elect Dr. (Terrence) Fitzgerald - waive the first late fee only, applicable for both officers

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8. Citizens for Rick Day - waive the first late fee only, applicable for both officers (Mr. DeMarinis also noted that this should include granting the waiver for two more reports and deny the remaining late fees.)
9. Citizens for Charles J. White - waive the first late fee only, applicable for both officers
10. Citizens for James M.G. Coofey - waive the first late fee only, applicable for both officers
11. Friends to Elect William (Bill) Goodin, grant the request since it had been approved by the Baltimore City Board of Elections.

The Board reviewed the requests for reconsiderations from the following campaign finance entities and the recommended action by the State Administrator:

1. Take A Stand – Maryland PAC - grant for the treasurer only
2. Committee to Elect Jessie Pulivarti – deny based on the fact that no new evidence to change the original denial was presented
3. Rebecca Nelson – Personal Treasurer – grant a waiver for the 2006 Pre Primary Report only.

The Board unanimously approved the recommendations of the Administrator.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Davis reported that the *Schade* case had been stayed until 2008. Once the funding issues are finally resolved, a final order can be entered. Mr. Davis also noted the ongoing activity with the three Green Part fee cases: *Hufnagel v. State Board of Elections*, *Maryland Green Party v. State Board of Elections*, and *Stysley v. Carroll County Board of Elections*. Of the three, Mr. Davis noted that the *Maryland Green Party* case was potentially the most costly. He noted that the Court of Appeals compounded the potential damages by waiting so long to rule. Further, the attorneys are seeking a fee of \$450 an hour, which Mr. Davis considers unreasonable given the fact that one attorney is a librarian and the other is a retired sole practitioner.

Finally, Mr. Davis noted that the Mr. Vovak's lawsuit has been dismissed.

ABSENTEE VOTING GUIDELINES

Ms. Trella presented proposed changes to the *Procedures for the Administration of Absentee Voting*. Ms. Trella explained that the proposed changes to procedures were mostly stylistic changes and changes to reflect current procedures. Procedures requiring the local boards of elections to submit absentee voting statistics were removed as this information can be collected from MDVOTERS, the statewide voter registration system.

Ms. Mack inquired as to the date by which a voter who needed to provide identification was required to provide identification. Ms. Trella responded that the identification needed to be provided before the start of the provisional ballot canvass on the 1st Monday after the election for the provisional ballot to be counted.

PROVISIONAL VOTING GUIDELINES

Ross Goldstein presented the *Provisional Voting Guidelines*. Mr. Goldstein noted that under §9-403 of the Election Law Article, the Board is required to review, update and approve *Provisional Voting Guidelines* prior to each election. Mr. Goldstein noted that §9-403 also requires input for LBEs. To comply with that requirement a workgroup was appointed by the MAEO president. That group met with Mr. Goldstein, Ms. Trella, and Ms. Jacobs last week to review the proposed changes to the *Guidelines* and provide input. Mr. Goldstein went on to explain that under the existing *Provisional Voting Guidelines*, a provisional ballot cast by a voter who did not go to the election district and precinct in which the voter currently resides is “accepted in part,” meaning any contest on that ballot is counted if it would also be on the ballot in the election district and precinct in which the voter resides. However, due to the ruling by the Court of Appeals in *Capozzi v. State of Maryland*, voters who do not vote in the correct election district can no longer have their ballots counted at all.

The majority of the proposed changes in the *Provisional Voting Guidelines* address this issue. Specifically, the *Guidelines* now state that when a voter casts a provisional ballot in an incorrect precinct a determination must be made whether the precinct is in the election district in which the voter resides. If it is not, the ballot will be rejected. If it is within the election district, then the ballot will be “accepted in part.” Procedures are established in the *Guidelines* to ensure voters are properly notified of this change and can make an informed decision about whether to go to their correct election district and precinct or stay where they are and vote a provisional ballot. Mr. Jezic asked whether the *Capozzi* decision applies to federal contests. In other words, can votes for federal races cast by voters in the wrong election district or ward still be counted? Mr. Jezic stated his opinion that the *Capozzi* decision should be read to apply only to State contests. Mr. Davis stated that it was his understanding that the issue raised by Mr. Jezic had been considered, but that he would need to spend some time reviewing the issue. Ms. Lamone noted that since no federal contests are on the Baltimore City ballot, a decision on the *Guidelines* for use by Baltimore City could still be decided at the present meeting.

Mr. Goldstein highlighted specific changes in the *Guidelines*.

1. Subsection 2.2 had been changed subsequent to the version received by the members in advance of the meeting. Mr. Goldstein reported that an error had been pointed out to him. The change reflects the fact that the requirement to vote in the election district or ward limits the ability of election directors to issue provisional ballot in their offices. Instead, the procedure is changed to require the issuance of absentee ballots. Ms. Beck asked whether this was permissible under the *Capozzi* ruling. Mr. Goldstein responded that it was since absentee ballots were a specific exception to the requirement that voters voted in their election district or ward.
2. Clarification that a provisional ballot application is sufficiently complete if Section 2 of the application is signed and there is sufficient information in Section 1 to determine whether the voter is registered to vote.

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3. The reporting requirements were changed to reflect the fact that all reporting of provisional voting information is done through the MDVOTERS system. Additional reports are no longer required to be filed with the State Board of Elections.
4. Stylistic changes were also made.

Mr. Jezic made a motion to approve the Guidelines subject to the advice of the Attorney general regarding the application of the *Capozzi* ruling on federal races. Ms. Beck seconded the motion. The motion was unanimously approved.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

SCHEDULING OF NOVEMBER MEETING

The next meeting of the State Board will be held on Thursday, June 28, 2007, at 2:30 p.m.

CLOSED SESSION

Mr. Walker asked for a motion to end the open meeting and go into a closed session for the purpose of discussing a personnel matter. Ms. Mack made the motion which was seconded by Mr. Jezic and unanimously approved by the Board.

ADJOURNMENT

The meeting adjourned at 3:55 p.m.