

Attendees: Robert L. Walker, Chairman
Bobbie Mack, Vice Chairman
David McManus, Member
Rachel T. McGuckian, Member
Charles Thomann, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeff Darsie, Assistant Attorney General
Mary Wagner, Voter Registration Director
Donna Duncan, Election Management Director
Paul Aumayr, Voting System Director
Nikki Trella, Election Reform Director
Jared DeMarinis, Candidacy and Campaign Finance Director
John Clark, Voter Registration System Project Manager
Stacey Johnson, Voter Registration System Deputy Project Manager
Janet Smith, Voter Registration
Michael Kortum, CIO
Valerie O'Connor, Budget Director
Donna Wiltshire, Procurement Director
Keith Ross, Project Management Office
Matt Libber, Project Management Office
Kathy McClellan, Project Management Office

Also Present:

Sandi Logan, Caroline County Board of Elections
Allison Murphy, Caroline County Board of Elections
Tammy Willis, Caroline County Board of Elections
Ronald M. Pippin, Caroline County Board of Elections
Tom Feehan, ES&S
Andrea Mansfield, Maryland Association of Counties
Patti Jackson, Worcester County Board of Elections
Teresa Riggan, Worcester County Board of Elections
Dale Godfrey, Worcester County Board of Elections
Alisha Alexander, Prince George's County Board of Elections
Anthony Gutierrez, Election Director, Wicomico County
Jerrold Garson, Chairman, Montgomery County Board of Elections
Mary Kiraly, Member, Montgomery County Board of Elections
Holly Joseph, Save Our Votes
Barbara Sanders, League of Women Voters Maryland
Sara Harris, Montgomery County Board of Elections
Walter Maddox, Howard County Board of Elections

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:34 p.m.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the October 22, 2009, board meeting were presented for approval. Mr. McManus made a motion to approve the minutes, and Ms. McGuckian seconded the motion. The minutes were approved unanimously.

ADMINISTRATOR'S REPORT

1. **Announcements**

Ms. Lamone informed the Board members that Thomas Queen passed away on November 8th. Thomas began working at SBE in 1990, while he was still in high school as part of a work study program. Thomas initially served as the office mail clerk. He received computer training and for the past several years served as part of the IT Division. Thomas will be missed in many ways. He filled an important role and was a key resource for the local boards of elections and campaign finance filers. He was well liked by everyone on the staff and always brought needed humor and lightheartedness to the office.

Ms. Lamone also announced that Peggy Wilkerson retired this month. Peggy worked for the State since July of 1989. According to Peggy, she began her career in elections when her husband signed her up to be an election

judge. After serving as judge, Peggy worked as a temporary employee with the Anne Arundel County Board of Elections. Peggy then moved to SBE and worked in the Campaign Finance Division where she was responsible for a variety of different tasks, including the late fee waivers that you will be reviewing today. Peggy did not want any fuss made over her retirement, but Ms. Lamone noted Peggy's hard work and the conscientious manner in which she completed all of her assignments. Mr. Walker requested that a letter be sent to Peggy extending the Board's thanks for her years of service and wishing her a fulfilling retirement.

Ms. Lamone reported that SBE staff contributed over \$300 in contributions and gifts for the Salvation Army Holiday Gift Drive. With these contributions, clothing, food, and toys were purchased for an 8 year old girl and her mother. These gifts were presented to the Salvation Army on December 8th. The collection was coordinated by Christine Oswald, and she did a great job in making sure the family will have a nice Christmas.

Finally, Ms. Lamone pointed out that SBE has undergone several office renovations as part of the lease renewal agreement. The office has been painted and re-carpeted, and new doors will be installed at the entrance to the suite and to close off the Voter Registration Division from the main lobby. In addition, staff has been (and will continue) working hard to clean up, eliminate unneeded files and supplies, and generally reorganize. While it was often disruptive and messy, the effort was definitely worthwhile. Donna Wiltshire coordinated this project, and Ms Lamone thanked her for hard work and extra hours spent making sure the project was completed on time.

2. **Meetings and Important Dates**

EAC's Technical Guidelines and Development Committee (TGDC)

Under the Help America Vote Act, the Technical Guidelines and Development Committee was established to develop the voluntary voting system guidelines. The membership of the TGDC includes representatives of the U.S. Election Assistance Commission's (EAC) governing boards – the Board of Advisors and the Standards Board, representatives of technical and standards associations, representatives of the National Association of State Election Directors (NASED), and other individuals with technical and scientific expertise relating to voting system.

Ms. Lamone reported that she was appointed to the TGDC as the EAC Board of Advisors' representative and attended her first meeting on December 9th – 10th at the National Institute of Standards and Technology in Gaithersburg. At this meeting, the TGDC received a briefing on various work being conducted by the EAC, including its Standards and Certification Programs, accessibility grants program, and threat assessment, and an overview and status of the Voluntary Voting System Guidelines. Ms. Lamone reported this was a very well run and informative meeting that outlined some of the new advances and changes that will be applied to voting system technology. In response to a question from Mr. Walker, Ms. Trella stated that new voting system technology was more focused on security, such as utilizing cryptography, not new voter interfaces.

Election Directors' Meeting

Ms. Lamone reported that an election directors' meeting was held on Tuesday, November 17th. During the meeting, there was an update on the voting system and electronic pollbooks, an overview of the expected mock election, and how to obtain information from MVA's database. A summary of the meeting was provided at the board meeting. No election directors' meeting has been scheduled for December.

Local Board Attorneys' Meeting

Ms. Lamone reported that she, Ms. Trella and Mr. Goldstein held a conference call with the attorneys for the local boards of elections to review the proposed regulations in Subtitle 17 (Early Voting). An overview of the chapters that had been adopted as well as upcoming regulations were provided during the meeting.

United States Postal Service

Ms. Lamone reported that Roger Stitt, Natasha Walker and Ms. Trella met with representatives of the Baltimore Region of the United States Postal Service to discuss the mail design approval process (specifically absentee voting envelopes), new postal requirements for election-related mail in 2010, impact of SBE's development of an on-line absentee ballot delivery system, and the impact of bulk mail facilities consolidation. It was a very productive meeting, and we hope to schedule a similar meeting with representatives from the Capital Region.

3. Election Reform & Management

Federal Legislation

Ms. Lamone reported that Congress enacted and President Obama signed into law S. 1390 – National Defense Authorization Act for FY2010 – which included Senator Schumer’s Military and Overseas Voter Empowerment (MOVE) Act. Generally, the MOVE Act makes it easier for military and overseas voters to register to vote, vote, and obtain election-related information. One of the most significant requirements of the MOVE Act is to require that States transmit absentee ballots to these voters at least 45 days before an election. States that are unable to meet this 45 day requirement are allowed to submit a request for a waiver of this provision to the Federal Voting Assistance Program. The Act specifies that the Federal Voting Assistance Program (FVAP) (the agency that reviews waiver requests and generally educates military and overseas voters about the voting process) has five days to review and respond to requests for waivers. Thus far, the FVAP has not provided any procedural requirements for filing the waiver request.

As Maryland is unable to meet this requirement for the gubernatorial general election, Ms. Lamone reported that SBE will be submitting a request for a waiver. A memo summarizing the impact of the 45-day requirement on Maryland was included in the meeting materials. Ms. Lamone also noted that staff is currently reviewing the other requirements of the MOVE Act to determine whether any legislative or regulatory changes are necessary.

In response to Mr. McManus’ request for clarification as to why Maryland cannot meet the 45 day requirement, Ms. Lamone stated that the gubernatorial primary and general elections are only 48 days apart and therefore ballots for a gubernatorial general election will not be ready until 18 days prior to the election. However, Ms. Lamone noted that a mitigation for Maryland is that the State provides an extended amount of time (up to 10 days following the election) for absentee ballots to be received by an election office.

Ms. McGuckian asked for clarification as to how ballots are sent to military and overseas voters. Ms. Trella responded that they must be sent via the method specified by the voter and can include mail, fax, or email. Ms. Trella also noted that staff is working with University of Maryland to improve the delivery of ballots via email. Mr. Walker then questioned what would happen if Maryland does not receive a waiver. Ms. Lamone responded that the State would be in non-compliance and could be subject to sanctions. Finally, Mr. Walker asked staff to provide him with the approximate number of Maryland military and overseas voters.

Ms. Lamone also reported that H.R. 1719 – Voter Registration Modernization Act of 2009 introduced by Congresswomen Lofgren – has had a hearing and is likely to be significantly amended. As introduced, this legislation would require election officials to provide on-line voter registration and change of information, use of electronic mail to communicate certain information to certain voters, and authorize the use of Help America Vote Act funds to implement the requirements. While the general intent and timeframe of the legislation is reasonable, many election officials expressed concern with some of the provisions, and it is expected that some of the provisions will be removed by amendment.

HAVA Requirements Payments

Ms. Lamone reported that Maryland’s State Plan was amended to prepare for additional requirements payments from FY08 and FY09. The final revised State Plan was submitted to the U.S. Election Assistance Commission and published in the Federal Register. After the publication period, she and Governor O’Malley submitted the required certification, and staff was notified last month that Maryland has been awarded \$3,893,622 in requirements payments for FY08 and \$1,810,987 in requirements payments for FY09. Staff is in the process of submitting the final accounting paperwork and then will receive these funds. These funds are earmarked for specific projects in the proposed FY 2011 budget and make additional improvements to the administration of elections.

Election Official Preparedness and Professional Development Program

Ms. Lamone reported that the inaugural courses of this program will be offered in January and February 2010. The certification program includes courses that will assist local board employees with preparing for an election as well as enhancing their professional development with courses such as project management and managing an election office. The Project Management Course (conducted by Keith Ross) will be offered on Friday, January 15th and Friday, February 26th, and the Voter Registration Policies and Procedures Course (conducted by the Voter Registration Division) will be offered on Friday, January 22nd and another date to be determined. Additional courses are expected to be scheduled at the combined SBE biennial/MAEO meeting in May 2010.

Election Judges’ Manual Committee

Ms. Lamone reported that the committee continues to work through the 2008 election judges’ manual and update and improve it for the 2010 elections and has started identifying and working through issues related to early voting. Work will continue through the winter with some of the material awaiting the selection of a voting system.

4. **Voter Registration**

Data Center Refresh

Ms. Lamone reported that the refresh of the MDVOTERS data centers continues and includes adding new components (servers, firewalls and software) to prepare for the 2010 elections. In November, the Voter Registration Division and Saber team installed and tested new equipment and software at the voter registration data center in Annapolis. During that time, all 24 local boards operated using only the Cumberland data center. In December, work began on the Cumberland site, and during this time, the local boards are all operating on the Annapolis site.

When both sites are ready, the system will be brought down statewide for four days (December 25th-28th) to synchronize the databases at the two locations. The local boards have been notified to make plans for the short downtime, although many local boards are closed for furlough and holiday days. The expected date for return to full operation of the new data centers is Tuesday, December 29th.

User Acceptance Testing

Ms. Lamone reported that user acceptance testing of MDVOTERS release 2.27 began Monday, December 14th. This is a major release, with 40 changes being made to the system to accommodate early voting. The Voter Registration Division has enlisted the help of local election board experts to test the new software, which is scheduled to be installed in January 2010. The next MDVOTERS release will also focus on early voting and is scheduled for March. These changes are being made based on the joint design sessions held with representatives of the local boards this past summer.

Motor Vehicle Administration Driver's License Verification

Ms. Lamone reported that SBE is still in dialogue with MVA to obtain driver license numbers for the approximately 40% of records that do not currently have a driver's license number. Cost may be a factor that prevents obtaining this data. MVA would like to split the \$10,000 cost; however SBE does not have the money to move forward at this time. Ms. Lamone reported that Mr. Kortum is working with the State's Department of Information Technology to find a solution to address this problem.

New Voter Registration Application (VRA)

The Voter Registration Division has redesigned the Maryland VRA form to make it easier to complete and return. The data fields on the VRA have been realigned to match the order of the data entry fields in MDVOTERS. This should speed up the data entry process at local boards and help during "crunch" times before statewide elections.

5. **Candidacy and Campaign Finance**

Candidate Filing

Ms. Lamone reported that, as of December 10, 2009, 59 candidates have officially filed for the 2010 Gubernatorial Election.

Audits

Ms. Lamone reported that the Candidacy and Campaign Finance Division has finished its audit of the 2008 election-related campaign finance reports. The audit resulted in 105 committees receiving deficiency notices, with the most common deficiencies being missing or incomplete addresses, incorrect entries for reimbursements, and a lack of explanation for expenditures. Amendments were due on November 13, 2009. 62.5% of the committees have filed the Pre-Primary campaign finance amendments, and 70% have filed Pre-General and Post-General campaign finance amendments. Non-filers are being assessed late fees.

Upcoming Report

Ms. Lamone reported that the Division is preparing for the 2010 Annual Campaign Finance Report due on January 20, 2010. The transaction period ends on January 13th. This report is required for all registered political committees regardless of their election designation.

Prohibition on Fund Raising During Session

Ms. Lamone reported that the fundraising prohibition will begin on January 13th at noon for all current office holders. This prohibition on raising or depositing funds applies to the Governor, Lieutenant Governor, Attorney General, Comptroller and members of the General Assembly.

Seminars/Trainings

Ms. Lamone reported that, on December 16, 2009, the Division conducted a training on using ELECTrack EFS and electronic filing, and 25 individuals attended. Forty-five individuals attended the October 23rd seminar on campaign finance compliance.

Enforcement Actions

Ms. Lamone reported that on October 29, 2009, SBE referred to the Office of State Prosecutor a complaint regarding vote buying in the mayoral and councilmanic elections in the Town of Hurlock. On November 13, 2009, the Office of the State Prosecutor determined that there was insufficient evidence to merit further investigation and subsequently has closed the case.

On November 4, 2009 SBE referred the following committees to the Office of the State Prosecutor:

- Employees Action Movement – Maryland Classified Employees Association PAC for failure to make disbursements by check, failure to designate a campaign account in a financial institution, and failure to deposit campaign funds into a permissible campaign account.
- Committee to Elect Scott Rolle for failure to report all outstanding obligations.

Republican Party

Ms. Lamone reported that the Division continues to monitor the Maryland Republican State Central Committee's progress in repaying the outstanding debt to the Michael Steele for Maryland Committee. All parties are in compliance with the memorandum of understanding.

On December 7th, Mr. DeMarinis and Mr. Goldstein met with Audrey Scott, the new chairman of the Maryland Republican Party, and Bob Ostrom, the party's counsel. During the meeting, Ms. Scott and Mr. Ostrom were briefing on the outstanding issues between the Maryland Republican Party and SBE. The meeting was productive, and both Ms. Scott and Mr. Ostrom noted their appreciation for Mr. DeMarinis' cooperation and willingness to work with them to ensure full compliance with Maryland Campaign Finance Laws.

6. Voting SystemsElectronic Pollbooks – Municipal Elections

Ms. Lamone reported that, on November 3rd, a total of 180 electronic pollbooks were deployed in seven municipal elections across the State. Pre- and post- election processes were conducted smoothly by the local boards in conjunction with the ES&S support team, and there were not reported problems with the electronic pollbooks.

<u>Municipality</u>	<u>Registered Voters</u>	<u>Voted DRE</u>	<u>% Turnout</u>	<u>Pollbooks Used</u>
Aberdeen	8,154	1,855	22.8%	5
Annapolis	22,983	7,904	34.4%	51
Bel Air	6,046	864	14.3%	4
Chestertown	2,603	442	17.0%	3
Frederick	30,647	6,909	22.5%	81
Rockville	33,775	6,127	18.1%	33
Takoma Park	10,893	1,728	15.9%	3
Total Nov 3 rd	115,101	25,829	22.4%	180

Electronic Pollbook Software Upgrade

Ms. Lamone reported that a pre-release evaluation version of ExpressPoll software version 2.6 plus associated EPIC server application upgrades have been received from the ES&S software development team. The software has been installed on electronic pollbooks as well as the EPIC server, and preliminary testing has been conducted for both early voting and election day scenarios.

7. Information Technology (IT)

Ms. Lamone reported on the following activities and accomplishments of the IT Division:

- Updated several SBE hardware/software licenses and support
- Completed several third party software upgrades/patches
- Provided updates to the data tables for the University of Maryland
- Completed several corrections to the latest ELECTrack release
- Rebuilt one desktop computer
- Upgraded two laptops for MDVOTERS
- Completed several website updates
- Completed numerous updates to the Online Library
- Completed monthly updates to PBX
- Received and installed the PBX expansion to add up to 25 additional lines for internal users and Election Help Desk expansion
- Organized a VPN demonstration for future networking of electronic pollbooks during early voting

- Completed material inventory updates to four local boards
- Assisted four local boards to install/check-out new equipments
- Assisted ten local boards with network issues
- Assisted four local boards to troubleshoot and repair of peripheral devices
- Provided help to 12 campaign committee treasurers
- Completed data file rebuilds for three campaign accounts.
- Processed background check for one contractor clearance
- Conducted 15 local board Annual IT & Physical Security Audits (inclusive of LBE offices, warehouses and some proposed early voting centers)

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie reported that, on November 23, 2009, an appeal was taken from the federal district court's decision dismissing plaintiff's claims in *Kendall v. Howard County Maryland*. Appellees include defendants in the lower court action Mr. Walker and Ms. Lamone, in the official capacities, and the State Board of Elections. Among other things, *Kendall* involved a challenge to the constitutionality of a statute governing Maryland's petition signature verification standards, as set forth in §6-203 of the Election Law Article and as interpreted by the Maryland Court of Appeals in *Doe v. Montgomery County Board of Elections*. In brief, a voter signing a referendum petition must sign his or her name as it appears on the statewide voter registration list or provide the surname of registration and at least one full given name and the initials of any other names. In the district court's Memorandum Opinion, Judge Motz ruled that §6-203 was "non-discriminatory and content-neutral," as required by the First Amendment. Mr. Darsie reported that appellee's brief is due February 19, 2010. Assistant Attorney General Kathleen Wherthey of the Civil Litigation Division has entered her appearance as counsel on behalf of the State appellees before the Fourth Circuit Court of Appeals. Sandra Brantley (former Assistant Attorney General to SBE) will also take part in this case.

SELECTION OF VOTING SYSTEM

Voting System Equipment

Mr. Goldstein noted that §9-101 of the Election Law Article requires the Board to select and certify a voting system for voting in polling places and a voting system for absentee voting. At this time, staff is prepared to make a recommendation for the selection of a new voting system for polling place and absentee voting. Mr. Goldstein recommended the following components of the Election Systems and Software's (ES&S) system for selection:

1. Unity 3.2.0.0 Election Management System (both election day and absentee);
2. DS200 Precinct Tabulator, version 1.3.10.0 (both election day and absentee); and
3. M650 Central Count Tabulator, version 2.2.2.0 (absentee voting only).

Mr. Goldstein provided an overview of the selection process.

1. The selection of the recommended system was initiated through a competitive procurement process through the issuance of a Request for Proposals (RFP). The RFP required offerors to submit a proposal for optical scan voting equipment, an Election Management System (EMS), and specific technical resources. All other services necessary to implement the voting system are being procured through a separate solicitation.
2. Two proposals were received – one from ES&S and the other from Premier Election Systems (Premier). However, days before the deadline to submit proposals, ES&S acquired Premier.
3. The Evaluation Committee thoroughly reviewed and ranked both proposals. While the Premier proposal was carefully reviewed, in the end, it was determined – in consultation with the Attorney General's Office and the Department of Information Technology (which has oversight of this procurement) – that the Premier proposal was not susceptible for award because:
 - a. Premier was no longer a viable independent entity capable of performing; and
 - b. ES&S essentially submitted multiple proposals (its proposal and the Premier proposal), which the solicitation stated was not allowed.
4. The Evaluation Committee reached a consensus and recommended the ES&S optical scan voting system for contract award for the following reasons:
 - a. The proposed optical scan voting system, in its entirety, has met and in certain categories, exceeded requirements set forth in the RFP;
 - b. In consultation with other jurisdictions, it has been determined that ES&S has satisfactorily performed in those jurisdictions;
 - c. Ergonomic user interface; and
 - d. Flexible election management system.

Mr. Goldstein then provided the Board with an overview of the cost proposals from both bidders.

ES&S System Proposal

- DS 200 Precinct Tabulator - \$ 7,313 per unit – 2,083 units proposed – total \$15,232,979
- M650 Central Count Tabulator - \$42,144 per unit – 34 units proposed – total \$1,432,896
- Election Management System - total cost = \$2,771,000

Total equipment plus 6 option years	\$30,665,589
Total Personnel Service plus 6 option years	\$8,765,120
Vendor Discount	(\$6,626,239)
Total Proposal	\$32,804,470

Premier System Proposal

- AccuVote OSX Precinct Tabulator - \$5,5511.39 – 2083 units proposed – total \$11,480,235.79
- Central Count
 - PhotoScribe Scanner – \$100,882.09 - 17 units proposed - \$1,714,995.62
 - OSX Unit - \$4,476.39 – 17 units proposed – total \$76,098.72
- Election Management System – total cost = \$316,225

Total equipment plus 6 option years	\$27,195,828.2
Total Personnel plus 6 option years	\$5,586,451.1
Vendor Discount	\$0.00
Total Proposal	\$32,782,279.3

Mr. Goldstein noted that negotiations with ES&S on the best and final offer are still ongoing. The final price may change due to the decision to exercise certain options presented in the proposal or modify certain quantities or services proposed. For example, ES&S proposed high-speed scanners for all counties. However, after reviewing the cost and capabilities, it is only economical to purchase the high-speed scanners for the largest counties.

Mr. McManus asked whether ES&S will have access to Premier voting equipment and whether ES&S could sell Premier's equipment, to which Mr. Goldstein responded that the proposal being recommended was only for the sale of ES&S equipment. Further, ES&S has made representations that there is only one "go-forward system" (*i.e.*, the system they intend to continue to develop and invest research and development resources), and that system is the system proposed by ES&S in its response. In response to a question from Mr. McManus about whether there was only one bidder would subject the procurement to a challenge, Ms. Wiltshire responded that, regardless of the fact that only one bid was received, all of the procurement rules were followed. The fact that other bids were not forthcoming does not indicate that the process was flawed.

Ms. McGuckian also questioned the lack of proposals, especially in light of the fact that this was a large state contract. Ms. Wiltshire responded that she thought that some of the smaller vendors did not think they could compete with bigger vendors. Mr. Goldstein agreed with Ms. McGuckian that the lack of competition was surprising and explained that the assumption was that having a separate equipment contract would increase competition since smaller vendors who might not be able to provide all of the services would not be eliminated from submitting a proposal. Ms. McGuckian then asked whether more bidders would be available in the future. Ms. Lamone responded that there may be additional bidders in the future but noted that there was a legal mandate to implement a new optical voting system in time for the 2010 Gubernatorial Primary Election and if the current proposed system was not selected, SBE would not be able to meet the mandated deadline. (Chapter 428, Laws of 2009)

Mr. McManus inquired about the letter Ms. Lamone sent to the Board of Public Works regarding the Board's concerns about the voting system procurement and implementation. Ms. Lamone stated that the letter was sent, but no response was received. Ms. McGuckian noted that it generally takes 12 months to implement a new voting system and since it is currently only ten months until the Gubernatorial Primary Election, she inquired as to whether there is enough time to implement the new system. Mr. Goldstein responded that there still is enough time as staff has been undertaking extensive planning to ensure the 2010 Gubernatorial Primary Election deadline can be met. Mr. McManus then asked whether there is money in the budget for the new system, to which Mr. Goldstein responded that there were sufficient funds in the FY 2010 budget. He noted, however, that the FY 2011 budget has not been finalized and the major costs will not occur until that time.

Mr. Goldstein then informed the Board that the cost estimates could increase if certain options proposed by the vendor are exercised. Ms. Wiltshire explained that the RFP asked the offerors to include in the proposals prices for certain

additional supplies and services, such as ballot sleeves, pens, servers, etc. Ms. Wiltshire stated that she will determine whether she can obtain a better price or opt to have the offeror provide the proposed items.

Ms. Mack inquired whether the State will have to buy more optical scan units if the number of precincts increases. Mr. Aumayr responded that the number of units being purchased includes spares which will accommodate some increases in the number of polling places.

Mr. Goldstein stated that the Board is also required to certify the voting system recommended for contract award. At this time, the state certification analysis and review and the development of regulations is not complete. However, staff is confident that the proposed system meets the state certification requirements because:

1. The key state certification component is that the system has been examined by an independent testing laboratory that is approved by the EAC and has been shown by the laboratory to meet the performance and test standards for electronic voting systems established by the Federal Election Commission or the EAC. In this case the proposed system was examined by iBeta, an EAC approved laboratory, and shown by the laboratory to meet the 2002 Voting System Standards issued by the Federal Elections Commission.
2. The proposed system has been certified by states with similar or more stringent certification requirements than Maryland's.
3. Initial testing and review by staff of the proposed system against the certification requirements indicates that the system will meet all certification standards.

In response to a question from Mr. McManus about who will conduct the State's certification analysis and when will it be complete, Mr. Goldstein responded that SBE staff will conduct the analysis. Mr. Aumayr estimated that the certification analysis will be complete within the first two weeks of January. By that time, staff will have completed its review of the documentation submitted by ES&S and the certifications completed by two other states (Ohio and Alabama) that have certified the proposed system. Mr. Goldstein stated that the contract with ES&S will state that final award is contingent upon the Board's certification.

Ms. McGuckian and Ms. Mack inquired about use of the proposed system in other states. Mr. Aumayr responded that it has not been deployed statewide. However, it was used in Cleveland, Ohio and several counties in Florida. Mr. Aumayr will provide a list of other jurisdictions that have used the system.

Ms. Mack asked whether the counties were also responsible for paying for the new system. Mr. Goldstein responded that State law requires all voting system costs to be shared equally between the State and county governments.

Ms. McGuckian asked Mr. Darsie a series of questions about whether the Board had to select this system and what happens if the Board chose not to select the system. Mr. Darsie reiterated the fact that there is a legal mandate to implement an optical scan system for the 2010 Gubernatorial Primary Election. Further, Mr. Darsie noted that the Board had no discretion about whether implementing a new system was a good idea. If the Board had some compelling evidence and could establish a record to substantiate that the proposed system is not acceptable, Mr. Darsie noted that they could refuse to select the system. However, no such record exists. Instead there is evidence that the system has been used successfully in other jurisdictions. Ms. Wiltshire agreed and noted that her evaluation team was very thorough in its investigation of the proposal submitted by ES&S. She stated that the Evaluation Committee would not have recommended the system had they not been comfortable that this is a system that meets Maryland's needs, satisfies the law, and is a good system for the State. Still, Ms. McGuckian noted that if there was more time the State could possibly receive more and better bids. Ms. Wiltshire acknowledged the possibility that more bids could be received at a later date but could not state for certain whether later bids would be more advantageous to the State.

Mr. McManus noted that State law requires SBE to select a system in order to implement the law. However, it is also incumbent on the Board to inform policy makers that there was no competition, the system has not been tested statewide, and generally the Board is concerned about the propriety of implementing a new system at this time.

Mr. Walker, noting the concerns, reiterated that the Board is under a legal obligation to select and certify a voting system that provides a voter verifiable paper record for each election beginning with the 2010 Gubernatorial Primary Election. If this system is not selected, there will not be enough time to conduct another selection process and still have time to implement a new system in time for the 2010 Gubernatorial Primary Election. Despite the issues discussed, the proposed voting system meets all of the legal and technical requirements necessary for the board to fulfill its legal obligation.

Ms. Mack reiterated her concerns about the impact on the counties and questioned whether they were capable of meeting the increased costs necessary to procure and implement this new system. Mr. Goldstein could not speak to whether the counties can absorb the increased costs but noted that the counties have been well informed about the potential costs associated with the new system.

Next, Mr. Goldstein provided a brief overview of several ongoing issues of concern:

1. Ongoing Anti-trust Litigation – The merger of ES&S and Premier clearly had an impact on this procurement process by limiting competitive options available to SBE. This likely impacted the final price received. Further, the possibility of anti-trust litigation and its potential impact on ES&S is a concern moving forward with this company.
2. Concerns regarding the accessibility of the voting system – Mr. Goldstein reported that the disability community has expressed concerns about the accessibility of the optical scan voting units. First, they assert that the optical scan voting units proposed by ES&S are difficult for someone in a wheelchair to use. Second, disability advocates assert that, during the ballot casting process, the user interface is also not accessible for a blind voters or voter with visually impairments. Finally, the disability advocates have also questioned the decision not to conduct the accessibility study required under §9-102(h)(2). The decision not to conduct that test is based on the fact that SBE is not, at this time, selecting a new accessible voting system. The existing touchscreen units are the accessible voting system and are not new. When accessible ballot marking devices are certified to the most recent version of the Voluntary Voting System Guidelines and are commercially available, the accessibility testing will be conducted. That accessibility testing will necessarily include a review of the optical scan units since they act in concert with the ballot marking devices.
3. Pursuant §9-102(j), the touchscreen voting units (approximately 2 per polling place) will be deployed to provide an accessible voting option for voters with disabilities. As SBE has been working with the local boards to develop plans for managing this new hybrid voting system, several issues have been identified. One issue is the concern that enough voters may opt to use the touchscreen voting system to substantially frustrate the goal of an election conducted primarily with voter verifiable paper ballots. The concern is based on the following factors:
 - a. Legal and practical considerations require that every voter has the opportunity to select the method by which he or she will cast the ballot;
 - b. Voters are comfortable and familiar with the touchscreen voting units;
 - c. Many voters have never voted using an optical scan system¹; and
 - d. Paper ballots in the polling place are now associated with provisional voting, which unfortunately, many voters erroneously feel will not be counted or will not be counted in a timely fashion.

Mr. McManus noted that the hybrid system will completely frustrate the goal of creating a voting system that can be fully audited using paper ballots. Mr. Darsie stated that lawmakers specifically contemplated an election using both touchscreen voting units and optical scan equipment.

Mr. Walker directed staff to draft a letter to the leadership of the General Assembly and the Board of Public Works outlining the strong reservations that the Board has with selecting, certifying and implementing a new voting system at this time.

Mr. McManus made a motion to select the ES&S voting system for precinct and absentee voting, and Mr. Thomann seconded the motion. The motion carried by a four to one vote. Ms. McGuckian opposed the motion based on the reasons discussed during the meeting and laid out in the memorandum sent by Ms. Lamone to the Board of Public Works.

Voting System and Other Services

Mr. Goldstein next informed the Board that a second RFP was issued to solicit a vendor with proven information technology and business project management expertise, including human resource management, master project scheduling, and coordination of vendor services, to provide a strong team to perform the following tasks:

- Assistance with all aspects of the statewide implementation of a new optical scan voting system;
- Assistance with the creation of an interface between the new optical scan voting equipment and the existing touch screen voting system; and
- Provide support and resources to SBE and local boards of elections during all phases of each election (including early voting) occurring during the contract period.

Mr. Goldstein reported that only one proposal was received in response to this solicitation. The Evaluation Committee conducted its review of the proposal submitted by Cirdan Group, Inc. The Evaluation Committee agreed that the Cirdan proposal and oral presentation addressed all of the requirements established in the RFP and provided a sound solution to implement the new voting system, conduct a voter outreach campaign to address the new equipment and early voting, provide resources to support the local boards during upcoming elections (training and technical resources), and coordinate the efforts of multiple stakeholders to ensure successful election(s). These requirements include:

¹ Montgomery County, Prince George's County, Baltimore City, Dorchester County and Allegany County have never used an optical scan voting system for polling place voting. These counties account for 43% of the registered voters in Maryland.

- Project management and coordination
- Human resource management
- Acceptance testing of the new voting system
- Inventory management
- Documentation
- Election worker training
- Voter outreach
- Touch screen equipment disposal
- Other implementation

Ms. Mack inquired about the Minority Business Enterprise (MBE) requirements applied to this contract and whether they were being met. Ms. Wiltshire responded that the Cirdan is an MBE firm and that they are exceeding the 30% MBE goal established in the contract. For the voting system equipment contract, an 11% goal was established and it is being met. The voting system equipment goal is lower because there are very few opportunities for subcontracting in the equipment contract.

Responding to a question from Mr. McManus about the lack of proposals, Ms. Wiltshire speculated that vendors did not respond because they assumed it was specific to voting systems. The RFP did require some voting system expertise, but a project management consulting firm could have partnered with a person with the necessary expertise, as Cirdan did with ES&S.

Cirdan is partnering with the following entities:

1. ES&S to provide valuable election operations related guidance and direction;
2. GKV (a public relations firm) for voter outreach;
3. Signature Space for transportation and logistics; and
4. Wright Solutions and OppTek for temporary personnel.

Next, Mr. Goldstein provided an overview of the costs of the services contract being considered.

	Base Contract Term (through 2012)	Total Contract Cost (including 4 one-year renewal options)
Key Project Personnel	\$ 3,021,499.88	\$ 6,001,072.82
Election Support Personnel	\$ 6,967,404.06	\$16,040,321.99
Other Personnel	\$ 6,778,337.53	\$14,204,388.87
Voter Outreach	\$ 855,240.00	\$ 855,240.00
Transportation	\$ 3,255,370.94	\$ 7,123,852.32
TOTAL	\$20,877,852.41	\$44,224,875.99

Mr. McManus asked why ES&S did not submit their own bid as opposed to serving as a subcontractor to Cirdan. Mr. McManus stated that he was troubled by the fact that ES&S is willing to sell the equipment but not support it.

Ms. Mack asked whether this contract will take some of the pressure off of the local boards. Mr. Goldstein responded that the contract is intended to continue the same level of services as those currently provided by the voting system vendor.

Mr. Goldstein noted that, as with the equipment contract, negotiations on the best and final offer are still ongoing. The final price may change due to the decision to exercise certain options presented in the proposal or modify certain services proposed.

Mr. McManus asked what would happen if the service vendor goes out of business and what protections are available to SBE if the vendor needs to be replaced. Ms. Wiltshire responded that the contract will contain performance guarantees. In addition, pursuant to the RFP, Cirdan was required to submit financial statements which were carefully reviewed by the Evaluation Committee to ensure that Cirdan has the resources to perform. Furthermore, Cirdan took the additional step of seeking an additional line of credit.

Mr. McManus asked about Cirdan's track record. Ms. Wiltshire stated they had a good track record in Maryland and that this was Cirdan's largest contract. Mr. McManus noted his concern that perhaps this contract was too much for the vendor. Mr. McManus noted his strong concern that this is a lot of money and may not be the best option. Ms. Wiltshire responded that the Evaluation Committee had the same concerns and that in general this is always a concern when only one vendor submits a proposal.

Ms. Wiltshire, responding to a question from Mr. Walker, noted that, with the exception of ES&S, all of the subcontractors with whom Cirdan is partnering are Maryland firms. Mr. McManus asked for more information about the

voter outreach portion of the contract. Ms. Trella responded that the outreach is modeled on the successful outreach effort used with touchscreen system and will include flyers, demonstrations at events, production of public service announcements, signs and other outreach activities. The contract also incorporates public outreach for early voting. Ms. Mack questioned whether some of the same support staff will continue to be present, to which Ms. Wiltshire responded affirmatively.

Finally, Mr. Goldstein noted that the Evaluation Committee is confident that Cirdan has a good understanding of the needs to implement this project and has put together a team that can effectively provide the support services involved in implementing the new voting system and conducting a successful election in 2010 and after.

Mr. McManus made a motion to approve the selection of the proposed services vendor for the implementation of the new voting system, and Mr. Thomann seconded them motion. The motion carried by a four to one vote. Ms. McGuckian opposed the motion based on the reasons discussed during the meeting.

REGULATIONS

Ms. Trella presented the following regulations:

- COMAR 33.17.02 (Early Voting Centers) for final adoption – The proposed regulations were published in the September 11th edition of the *Maryland Register*, and no public comments were received. Mr. McManus made a motion to adopt the proposed regulations in 33.17.02 as final, and Ms. Mack seconded the motion. The motion passed unanimously.
- Proposed changes to 33.06 (Petitions), 33.07 (Election Day Activities), and 33.08 (Canvassing) – Ms. Trella noted that these proposed changes were distributed before and presented at the October meeting but no vote was taken. Mr. McManus made a motion to adopt these proposed regulations, and Ms. McGuckian seconded the motion. The motion passed unanimously.
- Proposed changes to 33.17.01 (Definitions; General Provisions), 33.17.04 (Election Equipment and Materials), and 33.17.05 (Election Judges) and new regulations for 33.17.06 (Early Voting Activities) and 33.17.07 (Non-Voting Hours Procedures) – Ms. Trella explained that the new regulations in 33.17.06 generally mirror provisions in 33.07 except where the conditions of early voting differ from election day, and 33.17.07 addresses securing of equipment at the end of voting each day of early voting, returning all equipment to the local board's facilities the last day of early voting, and how to load results from early voting when the polls close on election day. Mr. Thomann made a motion to adopt these proposed regulations, and Mr. McManus seconded the motion. The motion passed unanimously.
- Ms. Trella explained that, as a result of the Board's email vote to adopt proposed changed to 33.17.03 (Public Notice of Early Voting), 33.17.04 (Early Voting Center Equipment and Set-Up), and 33.17.05 (Election Judges), the Board needs to ratify the action it took by email. Ms. McGuckian made a motion to ratify the adoption of these proposed regulations, and Mr. McManus seconded the motion. The motion passed unanimously.

APPROVAL OF EARLY VOTING CENTERS

Mr. Goldstein provided an overview of the early voting centers proposed by the **Baltimore County Board of Elections**. With one exception, all of the sites met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. The proposed early voting centers are:

- Bloomsbury Community Center in Catonsville
- Honeygo Community Center in White Marsh
- North Point Library on Merritt Boulevard
- Randallstown Community Center in Randallstown
- Towson University

The one exception was the Honeygo Community Center which is a mile away from the closest public transportation. Ms. Lamone recommended that the Board approve the proposed early voting centers. Mr. McManus made a motion to accept the Administrator's recommendation, and Ms. Mack seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of **Cecil County Board of Elections'** proposed early voting center in the County Administration Building in Elkton. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Ms. Lamone recommended that the Board approve the proposed early voting center. Mr. McManus made a motion to accept the Administrator's recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of **Charles County Board of Elections'** proposed early voting center in the Board of Elections' office in La Plata. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Ms. Lamone recommended that the Board approve the proposed early voting center. Ms. Mack made a motion to accept the Administrator's recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of **Kent County Board of Elections'** proposed early voting center in the Stephne Station in Chestertown. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Ms. Lamone recommended that the Board approve the proposed early voting center. Mr. McManus made a motion to accept the Administrator's recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of the early voting centers proposed by the **Montgomery County Board of Elections**. With two exceptions, all of the sites met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities.

- Executive Office Building in Rockville
- Bauer Drive Community Center in Rockville
- Germantown Recreation Center in Germantown
- Praisner Community Center in Burtonsville
- Silver Spring Civic Building in Silver Spring

One exception was the Executive Office Building in Rockville which does not have accessible parking within 200 feet. However, Montgomery County staff has proposed reasonable mitigating solutions that will provide sufficient accommodations. The other exception was the Silver Spring Civic Building which is still under construction and will not be ready until June 1, 2010. This is a risk in the event there are any construction delays. Ms. Lamone recommended that the Board approve the proposed early voting centers. Mr. Thomann made a motion to accept the Administrator's recommendation, and Mr. McManus seconded the motion. The motion was unanimously approved.

Next, Mr. Goldstein provided an overview of **Washington County Board of Elections'** proposed early voting center in the PNC Bank Building in Hagerstown. The site met the criteria established in COMAR 33.17.02, including the population threshold and being accessible by public transportation and for voters with disabilities. Ms. Lamone recommended that the Board approve the proposed early voting center. Mr. McManus made a motion to accept the Administrator's recommendation, and Ms. McGuckian seconded the motion. The motion was unanimously approved.

Finally, Mr. Goldstein provided an overview of **Worcester County Board of Elections'** proposed early voting center in the Snow Hill Train Station in Snow Hill. The Snow Hill Train Station is within 10 miles of only 15% of Worcester County voters (as opposed to the required 50%). Worcester County election officials stated that the Snow Hill location was proposed to avoid Labor Day traffic in Ocean City. In addition, they stated that the other sites that were considered were not workable for one reason or another. Ms. Lamone recommended against approving the Snow Hill Train Station because the proposed location does not even come close to serving 50% of voters within 10 miles. There are areas in the county where the 50% requirement can be met. Ms. McGuckian made a motion to accept the Administrator's recommendation, and Mr. Thomann seconded the motion. The motion passed unanimously.

WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented to the Board the following committees for a waiver of late fees:

1. Friends Of Antonio L. Hayes
2. Friends Of Belinda Smith
3. Friends Of Wesley C. Wood
4. Citizens For Meme Wells-Suznavick
5. Friends Of Earl Adams
6. Citizens For Benjamin Barnwell, Sr.
7. Orphan's Court Campaign Committee Slate
8. Friends Of Robert Stokes
9. NARAL Pro-Choice Maryland PAC
10. Build Green Energy Efficient Affordable Housing PAC
11. Friends Of Wayne Alfurqan
12. Friends Of James Henderson
13. Friends Of Anthony Brown
14. Friends Of Martin O'Malley
15. Kent County Democratic Central Committee
16. Kumar Barve Re-Election Committee
17. Citizens For Craig Rice
18. Committee For Jill P. Carter
19. Committee To Elect Joan Carter Conway
20. Faenita Dilworth For Board Of Education
21. Citizens For Mike Jones
22. Citizens For Glenn Werner
23. Committee To Elect Kenneth N. Oliver

24. Maryland Coca-Cola Enterprises Employee Nonpartisan Comm For Good Government PAC
25. Brain Bittner For Elected Office
26. Friends Of Marc Warren
27. Friends Of Pat Fletcher
28. Citizens For Joseph Horgan
29. Citizens For John P. Correr Jr.
30. Citizens For Paul Blitz
31. Tiger Pimentel Victory Campaign
32. Madhu Sidhu-Personal Treasurer
33. Save Merriweather PAC
34. Committee To Elect Ori Shabazz In The 6th
35. Re-Elect Nova Tracy-Soper Treasurer
36. Friends Of Darryl A. Kelley
37. Kevin A. Brooks- Personal Treasurer
38. Maryland ACORN Political Action Committee
39. Friends Of Ben Barnes
40. Friends Of Tom Masser
41. Friends Of Derrick Coley
42. Committee To Elect Andy Belt
43. Citizens For Tom Devor
44. Citizens For Cindy Todd

Mr. McManus made a motion to approve the pending waiver requests, and Ms. McGuckian seconded the motion. The motion carried by unanimous vote.

OLD BUSINESS

There was no old business discussed.

NEW BUSINESS

Last month, the Prince George's County Senate Delegation asked Alisha Alexander, the election director for the Prince George's County Board of Elections (PGBOE), to give a briefing to the delegation. As is her practice, Ms. Alexander asked her Board President and Vice President to attend the meeting with her. The Prince George's County Republican Central Committee learned about the meeting and raised strong objections based on the fact that the meeting would not be open to the public. As a result of the letter, the PGBOE convened an emergency meeting to determine whether the election director should attend the meeting and determined that she should not attend. Kenneth Barksdale, President of PGBOE, sent correspondence to Prince George's County Senator Nathaniel Exum, in which he stated that he will forward this issue to the State Board with a request that the Model Bylaws be amended to provide guidance on this issue.

Mr. Goldstein drafted a memorandum to the Board proposing that the State Board take a position that stresses the importance of local election officials being accessible to the public and providing their expertise when requested. Setting conditions on attendance at meetings hurts the public and the election board. For example, in the Prince George's County case, it would have been preferable for PGBOE to brief the Senators, while assuring the Republican Central Committee of their commitment to provide a similar briefing if requested.

Mr. McManus noted that some limitations would be necessary. For example, a purely partisan event that includes the development of political strategies should not be attended. Mr. Walker stated that this was already covered in the bylaws which clearly prohibit partisan participation. The Board was in unanimous agreement that the memorandum drafted by Mr. Goldstein should be the basis for providing guidance from the State Board to the local boards.

SCHEDULE FOR THE NEXT MEETING

The next meeting is scheduled for January 28, 2010, at 2:30 p.m.

ADJOURNMENT

Mr. Walker adjourned the meeting at 4:42 p.m.