

FEBRUARY 21, 2006

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman  
Tom Fleckenstein, Vice Chairman  
Joan Beck, Member  
Bobbie Mack, Member  
A. Susan Widerman, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Mark Davis, Assistant Attorney General  
Jared DeMarinis, Director of the Candidacy and Campaign Finance  
Jessica Jordan, Budget and Personnel Director  
Nikki Trella, Election Reform Director  
Mary Wagner, Director of Voter Registration and Petitions  
John Clark, MDVoters Project Manager  
Michael Kortum, CIO

Also Present: Andrew Rivera, Advancement Project  
Dian Herrman, MDP  
Mike Grissom, MDGOP  
Courtney Higgins, MDGOP  
Randy Cobena, Saber

**DECLARATION OF QUORUM PRESENT**

After establishing the presence of a quorum, Chairman Burger called the meeting to order at 1:34 p.m.

**APPROVAL OF MINUTES OF MEETING OF JANUARY 19, 2006**

Ms. Widerman and Mr. Burger offered the following amendments to the minutes:

1. Replace "Vice Chairmen" with "Vice Chairman" on the list of attendees (page 1).
2. Under "Declaration of Quorum Present" (page 1) – add "that can be done" after "Mr. Burger stated that he was confident that everything . . ."
3. Under "Legislation" (page 2) – add "she was very concerned and that" after "Ms. Wagner explained that, without electronic pollbooks, . . ."
4. Under "Voter Registration" (page 5) – Add "At the end of Ms. Lamone's report," before "Mr. Fleckenstein inquired as to whether there were other ways to identify individuals who do business with the State and make campaign contributions of \$500 or more. Mr. DeMarinis replied that there is no database from which to obtain this information." Make these two sentences a new paragraph under "Voter Registration."

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Ms. Beck made a motion to approve the minutes as amended, and Ms. Widerman seconded the motion. The amended minutes of the January 19, 2006 board meeting were approved unanimously.

**ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

**ADMINISTRATOR'S UPDATE**

Ms. Lamone presented to the Board her monthly report.

**Personnel**

Jacqueline Bryley has been hired to replace Barbara Spittler as personnel officer. Ms. Bryley has many years of state personnel experience and we are confident that she can come in and make an immediate impact. Ms. Bryley will start on March 1, 2006.

Judy Ritter of Wicomico County and Brenda Williams of Queen Anne's County have announced their resignation as election directors. Ms. Lamone recognized their years of service and dedication to the elections in Maryland. Ms. Beck, Ms. Mack and Ms. Widerman further express appreciation of their service. Mr. Burger commented that they were a pair from the hero set, true professionals and the Board salutes them

**Departmental Legislation**

Ms. Lamone reported that of the twelve departmental bills submitted, seven have been introduced in and passed by the Senate. They include:

1. SB 101 – Clarifying that petition verification is limited to checking whether the signer is a registered voter.
2. SB 105 – Permits the State Prosecutor to refer late fee enforcement to the Central Collection Unit of the Comptroller's Office.
3. SB 112 – Requiring all campaign finance entities to become continuing committees filed with the State Board and allowing them to designate the election year in which they will be participating.
4. SB 121 – Special Election for Congressional Vacancies.
5. SB 122 – Clarifies that ballot issue committees must file a pre-general election in addition to the post-general election campaign finance report.
6. SB 124 – Protection of voters' confidential information.
7. SB 129 – Establishes filing requirements for non-principal party candidates.

The departmental bill making technical changes to the voter registration laws has been filed in the House as HB 800. To date, it has not been scheduled for a hearing.

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She noted the remaining four departmental bills have not been introduced. They include modifications to absentee voting procedures, allowing more opportunity for non-principal party individuals to serve as election judges, candidate liability for campaign committee activity, and identification at the polls.

Mr. Burger inquired if the modification of the absentee voting procedures bill was moot in light of the new legislation. Mr. Goldstein responded no. Mr. Burger wanted to encourage the Governor's office to forward the bill for consideration. Ms. Lamone responded the Governor's office never forwarded them.

### **Candidacy and Campaign Finance Division**

Ms. Lamone reported the semi-annual Contribution Disclosure Form, a required filing by either a person who does business with the State involving consideration of \$100,000 or more and makes campaign contributions of \$500 or more or a person who provides lobbyist compensation and makes campaign contributions greater than \$500, was due on February 6, 2006. The Candidacy and Campaign Finance Division received over 170 disclosure forms from qualifying persons.

Additionally, the Candidacy and Campaign Finance Division received the 2006 Annual Report from 1,123 committees of which over 85% of the committees filed on time. Currently, 66 committees (6% of all committees) have not filed the Annual Report and are still accruing late fees. The maximum late fee penalty is \$250.

On February 10, Jared DeMarinis, Ross Goldstein and Mark Davis met with the attorneys from the Republican and Democratic parties regarding Administrative accounts. The meeting was very successful in bringing the parties to an agreed upon understanding of the permissible and prohibited uses of the funds. Mr. DeMarinis is in the process of finalizing the agreement.

Mr. Burger asked for a copy of the agreement so the Board may review it. Ms. Lamone said she give a copy for the Board's review.

Finally, as of February 15th, 115 candidates have officially filed for office.

### **Voter Registration Division**

Ms. Lamone stated that Saber and SBE staff are visiting each Local Board to meet with Election Directors and their voter registration staff. The purpose of these visits is to obtain feedback on the level of user satisfaction with MDVOTERS and to identify goals for a successful election. This information is being used to develop the Project Management Plan for the remainder of 2006.

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SBE met with Montgomery County LBE to discuss the interface between the Montgomery County GIS (Geographical Information System) and MDVOTERS. The interface is undergoing testing at this time.

Another interface is being developed with the State's Judicial Information System (JIS). This interface will identify convicted persons who have lost their right to vote and must be removed from the statewide voter registration list.

Work on the interface with the Motor Vehicle Administration (MVA) is continuing. The MVA interface will provide an automated check of a new registrant's driver's license against the MVA's driver's license database. The MVA and Social Security Administration have signed the necessary paperwork for social security number verification. This verification process will require additional communication with MVA and the America Association of Motor Vehicle Administrators.

Ms. Beck inquired about the timeline or the conclusion of the project. Ms. Wagner responded the deadline is the end of the week. Mr. Cobena interjected that good progress has been made but because it is an interagency process, the deadline is March. Ms. Wagner noted that there is a backup process in place to verify driver's license numbers

On Thursday, February 16, 2006, InfoSentry Services, our independent validation and verification contractor, conducted a Load and Performance Test on the MDVOTERS system, with approximately 175 persons participating statewide. The purpose of the test was to measure MDVOTERS performance under heavy usage. Large reports were printed and numerous searches of the database were made over a five-hour period. The data centers were both intentionally brought down, and the ability of the system to recover and bring users back on line, without losing data was tested. The final results of the test require analysis by InfoSentry.

Ms. Widerman asked when the results are expected. Ms. Wagner responded the results would be in 2 weeks. Mr. Burger requested a summary of the load testing results.

### **Voting System**

Ms. Lamone reported that the voting system team would like to thank the following counties for participating in our User Acceptance Testing: Anne Arundel, Baltimore, Dorchester, Montgomery, and Prince George's counties. The team tested the GEMS software (version 1.18.24) and AccuVote-TS BallotStation software (version 4.6.4). The battery of tests included testing magnified and high contrast ballots, under vote alerts, and audio for the visually impaired. The test was successful and all counties approved the software. This upgrade increases security.

Mr. Burger commented that last month's report was "too early to tell" about proceeding with the upgrades and now it appears SBE is going ahead with the upgrade. Ms. Lamone

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responded that we waited for the conclusion of the California test. Mr. Burger inquired about the software change and configuration-management change. Does this require two upgrades? Ms. Lamone responded only one upgrade. It would be too expensive for 2 upgrades. The upgrade will occur in 2 weeks. Mr. Burger asked if the changes would be incorporated. Ms. Lamone answered yes in 2 weeks. Mr. Burger questioned if the upgrades to server required certification. Ms. Lamone answered no, the server has been user acceptance certified. Mr. Kortum further noted certification required a degree of change. Mr. Burger asked if the threshold has not been met. Mr. Kortum answer the threshold has not been reached.

Ms. Lamone continued with her report stating the voting system team is now in the midst of preparing to upgrade the GEMS servers and touchscreen units throughout the state. This upgrade will be done in two phases. The first phase will be to update the GEMS servers. The second phase includes updating the touchscreen units and performing an end-to-end test between the GEMS servers and the touchscreen units. A successful end-to-end test will ensure the voting system is prepared for Election Day preparation and Election Day activity.

The team revised the documentation for the upgrade process in detail. This effort included establishing reusable forms that enhance the tracking, the independent validation and verification process, and the care, custody, and control (security) of the software and system itself. In preparing for future upgrades the team updated the test scripts and documented the test cases to support the test scripts. This effort enhances the testing process and will be valuable for future upgrades.

#### **National Association of State Election Directors' Winter Meeting**

On February 3-6, 2006, Ms. Lamone attended the National Association of State Election Directors' (NASSED) Winter Meeting in Washington, D.C. During this meeting, we received an update on the work of the U.S. Election Assistance Commission, a report on California's voting systems meeting, and information about the federal Real ID Act, preparing for a disaster, other states' HAVA success stories, and how vendors are going to meet the accessibility and voter-verified paper audit trail requirements. The last day of the meeting was a joint meeting with the National Association of Secretaries of State. On this day, we received a briefing from UMBC and College Park on their preliminary findings of the vote verification system study, a presentation about the verification of social security numbers, voter information access portals, and federal auditing. A conference summary will be provided upon completion.

Mr. Burger offered his congratulations on Ms. Lamone completing her term as President of NASSED and noted that he hoped that her replacement would be as successful as Ms. Lamone.

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### **Help America Vote Act**

#### HAVA State Plan

Ms. Lamone reported the HAVA State Planning Committee reviewed the public comments on the revised sections of the State Plan but did not make any changes to the revised sections. The final revised sections were submitted to the Election Assistance Commission on January 27<sup>th</sup> for publication in the Federal Register. The revised sections have not yet been published. The revised plan will be effective 30 days after publication in the Federal Register.

#### Financial Reports

Financial reports for Title I and II funds are due on February 28, 2006, and March 30, 2006, respectively. Draft reports were provided at the board meeting. Any comments on the draft reports were requested by Friday, February 24<sup>th</sup>.

#### Election Judges' Manual and Training

Jaimie Jacobs conducted a session for the election directors and local board staff members responsible for conducting election judges' training on the most effective techniques for educating adult learners. At this session, the local board representatives learned the different methods how adults learn and how to incorporate those methods into election judges' training. The session was very well received.

Work on the election judges' manual is continuing. The final chapters have been sent to BlueWater Agency, the graphic design firm redesigning the judges' manual, for formatting and editing. As BlueWater Agency returns the edited chapters, the chapters are sent to the Election Judges' Manual Committee for "blue line" review. A list of county-specific sections will be provided to the local boards so that they can begin drafting the instructions for these sections.

Ms. Widerman inquired on how many people are on the committee. Ms. Trella answered 6. Ms. Jacobs further noted that several sections have been left for the LBE to customize.

#### Voter Outreach

Ms. Lamone informed the Board the Voter Outreach Strategy document for Phase III has been finalized. TV, radio, and public service announcement scripts have been signed. Production scheduling for the TV and radio commercials has begun, and a local radio personality has agreed to do both the TV and radio commercials. Mary Dewar is updating the Guide for Effective Voter Education reference manual and will offering the local boards voter outreach training with the upgraded software.

Mr. Burger emphasized how important this activity is especially with the complaints on voter confidence. Ms. Lamone responded that the strategy must have been working because we have a 92% voter confidence approval. Mr. Burger requested the polls results be shared with the Board. Mr. Goldstein said he would print them out. Ms. Mack

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commented that she was pleased with the results. Ms. Widerman wanted to know what was the core message of the outreach. Ms. Trella responded the outreach was to introduce Baltimore City voters to the DRE machines. Ms. Beck inquired if the outreach included early voting. Ms. Trella answered that the outreach focused just on using the machines.

### **Audio Ballot**

Jaimie Jacobs and Paul Auymar finalized the audio ballot text that will be used in the upcoming elections. The final text was the result of input from members of blind community.

### **ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Davis delivered his report on the current state of the legal matters pending before the Board.

### **Litigation**

*Schade v. SBE* (Circ. Ct. for Anne Arundel Co.) - Court denied Schade's motion to compel production of source code and unredacted SAIC report and granted in part SBE's motion to compel TrueVote's designee--Linda Schade--to answer questions. Schade's deposition scheduled for March 8. Discovery schedule pending.

*Nader for President 2004 v. SBE* (fee petition claim for 2004 election)(Court of Special Appeals) - Argument scheduled for March 8 at UB law school.

*Maryland Green Party v. Maryland Board of Elections* (2000 denial of ballot access to Green Party; claim for attorneys' fees of \$338,000 plus)(Court of Appeals) --certiorari petition denied by Court of Appeals.

*Hufnagel v. State Board of Elections* (2002 denial of ballot access to Green Party)(Circ. Ct. for Anne Arundel Co.) - Motions hearing held on October 31, 2005. SBE's motions to dismiss still pending.

*Stysley v. Carroll County Bd. of Elections* (attorneys' fees petition claim; spin-off of *Maryland Green Party*) (Cir. Ct. for Carroll County) - Green Party seeks \$45K in attorney's fees for denial of ballot access in 2000. Hearing held on January 31. Motion to dismiss petition for fees pending.

Ms. Beck asked Mr. Davis about the constitutional challenges regarding early voting. Mr. Davis replied that it is difficult to speculate on the challenges and he had not reviewed the specific challenge. However, Mr. Davis believed that the statute and constitution must be read together. Ms. Lamone added the Attorney's General's office has approved of early voting and all litigation about early voting has been upheld. Ms.

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Beck replied the way the statute read seems to create a problem. Mr. Davis requested Ms. Beck forward her concerns.

### **WAIVER OF LATE FEES**

Mr. DeMarinis presented the Board with three requests for waivers of campaign finance late fees. The Committee to Elect Tom Bromwell made the first request. Mr. DeMarinis informed the Board the Committee was unable to file its report because of government seizure of the computer. The second request by Citizens to Elect Bob Costa claimed the committee was unable to connect to the server. Mr. DeMarinis informed the server did not have technical problems and was running at the time. However, the committee has never been late in reporting, and it is the policy of the Board to grant waiver on first time offenders. The final waiver request was by the treasurer of the Somerset County Democratic Central Committee, William O'Donnell Miller. He was the treasurer for only 4 days and never had access to the records.

Ms. Widerman made a motion to approval all of the waiver requests. Ms. Mack seconded the motion. The motion passed unanimously. Mr. Burger noted the Citizens to Elect Bob Costa be reminded to file early to avoid future penalties. Ms. Beck commented on the Candidacy and Campaign Finance Division newsletter and trainings telling she has great and positive feedback on it.

### **APPROVAL OF FORMS**

Ms. Trella noted that two forms were submitted to the Board for approval. The first form submitted for approval was the Request for Polling Place Change or Absentee Ballot, which was redesigned and simplified at the request of the Maryland Disability Law Center. Ms. Widerman suggested adding an instruction to check the appropriate boxes. Ms. Beck made a motion to approve the form as amended, and Ms. Mack seconded the motion. The motion was approved unanimously.

The second form presented for approval was the absentee ballot application. Mr. Burger asked if there was a sense of the anticipated increase of absentee voting with the enactment of "no excuse" absentee voting. Ms. Beck responded that she did not expect a huge change. Ms. Mack noted that estimates will needed prior to ordering absentee ballots. Ms. Mack made a motion to approve the form, and Ms. Widerman seconded the motion. The motion was approved unanimously.

### **OLD BUSINESS**

Ms. Beck offered her grave concerns on early voting and security precautions regarding the equipment. Mr. Burger responded that the Board has not endorsed early voting and expressed his concerns about not having enough time to implement it. Mr. Burger would

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support a deferral of early voting until 2008. Ms. Mack asked whether the money to implement has been requested and whether electronic pollbooks could be used in smaller elections prior to 2008. Mr. Fleckenstein answered the money for electronic pollbooks are in this year's supplemental budget request. Ms. Lamone added if SBE gets the appropriation then electronic pollbooks would be in use for this year's election. Ms. Widerman stated with early voting we cannot identify the voters and allows for doubling voting. Mr. Fleckenstein responded that early voting does not make it easier to double vote. The problem of double voting exists without early voting. Mr. Burger and Ms. Beck reiterated their concerns. Mr. Fleckenstein asked when the Board established its position on early voting. Mr. Burger replied the Board decided on that opinion prior to Mr. Fleckenstein and Ms. Mack joining the Board.

**NEW BUSINESS**

Ms. Beck inquired about Diebold and California and the upgrades taking place. Ms. Lamone answered she has not seen the confidential report. Ms. Lamone noted that California uses precinct based optical scan system while Maryland does not.

Mr. DeMarinis submitted to the Board a policy, Policy 2006-01, for names appearing on the ballot. The policy clarified Election Law Article §5-301(c)(3). Mr. Burger reminded Mr. DeMarinis that the Board prefers to review any policy changes at least a week prior to the meeting. Mr. DeMarinis apologized for the short notice but said the matter required immediate action because the number of filings will begin to increase. Mr. DeMarinis stated the policy gives the Candidacy and Campaign Finance Division the authority to reject any alternate names with offensive terms, racial slurs, derogatory terms or swear words. Mr. Fleckenstein made the motion adopting Policy 2006-01, seconded by Ms. Beck. The motion was approved unanimously.

**SCHEDULING OF MARCH MEETING**

The next meeting of the State Board will be held on March 28, 2006 at 1:30 p.m.

**SUMMARY OF CLOSED SESSION ON JANUARY 19, 2006**

The Board met in closed session on January 19, 2006, at approximately 3:00 p.m. to consult with staff and counsel about several matters involving pending and potential litigation. The closed session was permitted under State Government Article, § 10-508(a). In the open meeting on January 19<sup>th</sup>, Mr. Burger made a motion to hold a closed session, and Ms. Widerman seconded the motion. On a roll-call vote, all members voted in favor of holding a closed session.

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Mr. Burger, Ms. Beck, Ms. Widerman, Ms. Mack, Ms. Lamone, Mr. Davis, and Ms. Trella were present for the closed session. The board discussed recent reports about the memory cards used in Diebold's voting systems and its impact on the pending litigation.

**CLOSED SESSION**

Chairman Burger made a motion to hold a closed session in order to discuss personnel matters. A closed session is permitted under State Government Article §10-508(a)(1). Ms. Widerman seconded the motion, and on a roll call vote, all members voted in the affirmative.

**ADJOURNMENT**

Before the commencement of the closed session, on a motion by Mr. Burger, seconded by Ms. Widerman, the public meeting was adjourned at 2:47p.m.

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Gilles W. Burger, Chairman