

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Frank Boston, Member
Gene Raynor, Member
Linda H. Lamone, Administrator
Judy Arnold, Assistant Attorney General
Ross Goldstein, Deputy Administrator
Mary Cramer Wagner, Director of Voter Registration
John Clark, Voter Registration System Project Manager
Natasha Walker, Election Management Division
Pam Woodside, Chief Information Officer
Janey Hegarty, Administrative Assistant
Terry Harris, Deputy Director of Campaign Finance
Jessica Jordan, Budget Officer
Nikki Trella, Election Reform Director
Jaimie Jacobs, Election Reform Deputy Director
Mary Dewar, Election Reform Division
Joseph Torre, Voting System Project Manager
Patrick Strauch, Voting System Project Manager

Also Present: Guy Harriman, Howard County Board of Elections
Barbara Fisher, Election Director, Anne Arundel County Board of Elections, and
MAEO President
Carole Streeting, Deputy Director, Anne Arundel County Board of Elections
Michael Curtis, Accenture
Courtney Keith, Accenture
Frank Broccolino
Dave Laning, Baltimore County resident
Henry Marshall

DECLARATION OF QUORUM PRESENT

Mr. Burger called the meeting to order at 1:38 p.m. and wished everyone a happy New Year.

APPROVAL OF MINUTES OF MEETING OF NOVEMBER 30, 2004

Mr. Raynor proposed adding a sentence as the last sentence under “Unofficial Final Election Results” of the Administrator’s Update. He proposed adding “The unofficial election results were completed by 6:30 p.m. the following day.” [Subsequently, the staff clarified that the unofficial election night results were completed by 3:00 a.m. on November 3rd and that the 100% verification of these preliminary results was completed by 6:30 p.m. on November 3rd. The November 30, 2004, minutes were amended, with the approval of the majority of the Board, to reflect this correction.]

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Mr. Raynor also proposed amending the "Scheduling of December Meeting" section to reflect that the Board convened a meeting at 9:30 a.m. on December 13, 2004, before attending the Electoral College. According to Mr. Raynor, Ms. Beck was elected Vice Chair, and the Board restated the criteria for overnight travel. Mr. Raynor stated that Ms. Wideman took the minutes of the meeting.

In response to these proposed changes, Mr. Burger explained that it was not his intention to have a Board meeting on December 13th. Mr. Burger stated that there would be no action on the proposed changes concerning the December meeting until he had the opportunity to review the minutes.

On a motion by Ms. Beck, the minutes with the proposed change to the "Unofficial Final Election Results" were approved.

ADDITIONS TO THE AGENDA

Mr. Burger stated that staff had requested that the Approval of Voter Registration Challenge Form be added to the agenda. This item was added to the agenda after the Assistant Attorney General's Report.

ADMINISTRATOR'S UPDATE

Ms. Lamone suggested that the Board might be interested in a brief documentary concerning Nevada's experience with voter verified paper audit trail (VVPAT) in the 2004 General Election. This documentary, which was commissioned by the Los Angeles County Register/Recorder's Office, was shown at a recent national meeting of State and local election officials, who appeared stunned by the practical implications of using a VVPAT. The 11-minute documentary was shown.

After watching the documentary, Ms. Beck asked if Diebold has a paper trail device for the voting system used in Maryland. Ms. Lamone responded that Diebold does not have such a device in production for the voting system used in Maryland. Mr. Raynor questioned the recount data presented in the documentary and stated that he did not believe that the issues presented in the documentary are the same issues being faced in Maryland because the voting systems are different.

ADMINISTRATIVE COMPLAINTS

Ms. Lamone reported that nine administrative complaints arising out of the General Election have been received. Four of the complaints dealt with alleged voting system irregularities such as faulty memory cards. Since these issues are not covered under Section 301 of HAVA, the complainants have not established a cause of action for an administrative hearing. Staff will be researching each of these complaints and sending an informal response. Hearings will be scheduled for the five remaining complaints. The complaints will be consolidated into two hearings:

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

- ~~/s/~~ Hearing 1 will cover the three complaints regarding the failure of election judges to properly administer provisional ballots; and
- ~~/s/~~ Hearing 2 will cover the two complaints alleging that voters were unable to alter their selections on their voting units.

Ms. Lamone noted that it was not the voters who were allegedly aggrieved that filed the complaints. These complaints were instead filed by pollwatchers. She also stated that attempts have been made to find a hearing officer from outside the agency. Mr. Burger expressed his support for the hearing officer search. The deadline to file an administrative complaint for an action or event occurring on Election Day was January 3, 2005.

FEDERAL VOTING ASSISTANCE PROGRAM

Ms. Lamone stated that a summary of the Federal Voting Assistance Program's Interim Voting Assistance System (IVAS) was provided in the materials. At Mr. Burger's request, Ms. Trella explained that the IVAS allowed eligible absentee voters to request and obtain absentee ballots and materials via a closed network on the Internet. This system allowed eligible voters to obtain a ballot from the system, which eliminated the normal mailing time. Mr. Burger inquired as to whether there were any problems with the system, and Ms. Trella reported that there were some, but they were most likely a function of the FVAP's quick roll-out of the system.

POST ELECTION ANALYSIS - LONG LINES AT POLLS

Ms. Lamone reported that the local boards were surveyed about long lines at the polls. The survey responses clearly showed that the long lines existed at voter check-in and generally in the early morning hours. Mr. Burger noted that he thought the survey results mirrored his observations from Election Day. He stated that he would like the staff to continue to work on ways to reduce the waiting time of voters and believes that lines at the polls are the most significant Election Day problem. Mr. Harriman requested permission to speak and noted that voter turnout for the General Election was high before work and during lunch but there was no rush after work. Mr. Burger noted that survey results reflected this.

Mr. Burger suggested that there might be a better mechanism to divide the precinct registers and believes that how the alphabet is divided into precinct registers is random. Ms. Fisher offered that one solution would be to increase the number of precinct registers, which would translate into an increase in the number of election judges. She noted that she rarely receives complaints that one line is longer than another. Mr. Burger responded that there may be other solutions for shortening the lines. Ms. Beck noted that the voters she observed seemed willing to wait in line.

VOTER REGISTRATION

Ms. Lamone noted that the date for the RFP submissions is January 12, 2005 at 2:00 p.m. She also reported that there was a Voter Registration Lessons Learned workshop on December 15, 2004. Ms. Wagner explained that this was a workshop for the voter registration staff members of the local boards to meet and discuss voter registration issues. Ms. Wagner noted that she has received very positive feedback. The voter registration staff members in the local boards seem

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

pleased to communicate and work with their peers in other counties and are looking forward to both the new voter registration system and future meetings.

ELECTRONIC POLL BOOKS

Ms. Lamone reported that MAEO had a presentation of an electronic poll book from Mr. Gary Smith, Election Director, Forsyth County, Georgia. Ms. Fisher explained that an Access database, installed on laptop computers, handles the county's 75,000 registered voters. This particular program allows election officials to perform many tasks and streamline the Election Day check-in process. It does not have the capability of interfacing with the TS voting system. She noted that this product was expensive, but could be more cost effective in the long run. MAEO hopes to include a workshop on this at the upcoming MAEO Conference.

Mr. Torre explained that Wicomico County hopes to test Diebold's electronic poll book during the upcoming Salisbury election. (The primary election is scheduled for March 1, 2005, and the general election is scheduled for April 4, 2005.) Mr. Burger expressed great interest in exploring the various electronic poll books available. He believes this will greatly cut down on check-in lines on Election Day.

LEGISLATION

Ms. Lamone reported that the Governor's office has approved all of SBE's proposed departmental legislation. The bills are currently being reviewed by legislative services. At the request of Judge William D. Missouri, Chair of Circuit Court judges, Ms. Lamone, Ms. Arnold, and two staff members met with him to discuss requiring certain information be placed on the ballot for circuit court judges' contests. The goal of any legislation sponsored by the judges would be to reduce voter confusion in the General Election. Ms. Lamone reported that she has not seen any legislation yet.

Ms. Lamone stated that the House Ways and Means Committee briefing on voter verification methodologies went very well. Diebold brought a prototype of the paper trail for the voting system used in Maryland. Dr. Michael Shamos, a professor at Carnegie Mellon University and expert witness for the State in the Schade litigation, testified at the briefing and was well received. After the presentation, Ms. Lamone reported that some of the Delegates stated that, since the election went well, there was not a need to make any changes. The chair of the Elections Subcommittee observed Election Day in Nevada and reported that he "could not imagine all this paper." Mr. Burger asked if the same briefing had been made in the Senate. Ms. Lamone responded that the Senate had not yet requested a briefing.

Ms. Lamone also reported that the office has received several requests from legislators and their staffs. The questions concern campaign finance compliance (Senators Gladden and Mooney), judicial elections (Delegate Anderson, who is working with the circuit court judges), early voting (legislative staff members), and voter registration information (Delegate Gilleland).

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

CAMPAIGN FINANCE

Ms. Lamone noted that there was a recent seminar on Campaign Finance Compliance and the ELECTrack software. Fifteen campaign committee officers and candidates attended. The 2005 Annual Report is due on January 19, 2005.

VOTER TURNOUT

Mr. Burger inquired about voter turnout numbers from Frederick County. Ms. Walker explained that the numbers are not yet available because the local board had to rescan the Voter Authority Cards to generate voter turnout numbers. She said that the final numbers should be available soon.

VOTING SYSTEM

Ms. Lamone reported that SBE has chosen to approve Diebold's services contract renewal option for 2005 (January 1 through December 31), which includes 4 program management office personnel and 5 regional managers. Ms. Lamone stated that the staff is negotiating with Diebold on a contract amendment for Phase III, Baltimore City implementation, and the target date for completion is May or June. It is expected that an additional 2,000 voting units will be purchased for the City.

Ms. Lamone reported that the staff is analyzing Montgomery County voting units with reported performance issues. Once they are finished there, they will start the same process in the other counties, beginning with Baltimore County.

Ms. Lamone referred the members to the IT Status Report previously provided to the Board.

ASSISTANT ATTORNEY GENERAL'S UPDATE

Ms. Arnold distributed a written outline summarizing her update. She noted that the amount of litigation has decreased.

ROSS LITIGATION

Ms. Arnold noted that this is an action by a Green Party candidate for a Baltimore City Council seat, challenging the eligibility of Paula Johnson Branch based on her political committee's failure to file campaign finance reports. The court heard arguments on the motions to dismiss on January 11, 2005. The court promised a written decision in the next couple of days.

LYMAN LITIGATION

Ms. Arnold noted that this case is stayed until the end of the legislation session to see if the General Assembly enacts legislation addressing the issue of independent voters voting for judges in primary elections.

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

NADER LITIGATION

Ms. Arnold reported that neither the Court of Special Appeals nor the Court of Appeals has a record of docketing the appeal by Nader campaign. Ms. Arnold said that this is being looked into.

CONTRACT/PROCUREMENT MATTERS

Ms. Arnold reported that a letter to Diebold denying its contract claim for interest was sent recently. Diebold may appeal to the Board of Contract Appeals within 30 days of receipt of the letter.

PUBLIC INFORMATION ACT REQUEST

Ms. Arnold reported that she is awaiting an estimate of the cost from the staff, so that she can respond to a public information act request from the Electronic Privacy Information Center (EPIC).

LETTERS OF ADVICE

Ms. Arnold noted that a letter of advice was issued addressing the question of whether a local board IT specialist had to be a State employee. The letter advised that the IT specialist could be either a State employee or a county employee, as long as the individual was providing the necessary support.

Ms. Beck stated that, in light of the Schade litigation, information about who can be a pollwatcher should be incorporated into the election judges' manual. Ms. Arnold agreed and suggested that there may be changes that could be made to the pollwatcher form to clarify who is eligible to be a pollwatcher.

APPROVAL OF VOTER REGISTRATION CHALLENGE FORM

Mr. Goldstein presented for Board approval an update to the Voter Registration Challenge form. Mr. Goldstein explained that the form currently lists two reasons for a challenge: the voter is ineligible to register; or the voter was improperly omitted from the registry. The change adds another reason for a challenge: the voter history information is incorrect. Responding to a question by Mr. Burger, Mr. Goldstein explained that Frederick County had received challenges to the voter history information and felt that a specific reference on the form would be useful. The Board unanimously approved the change in the form.

REGULATIONS

Mr. Torre presented to the Board two regulations for final adoption and one regulation for publication as a proposed regulation.

The published changes to Regulation 33.07.04 prohibited computer devices such as laptops and personal digital assistants from being used in a polling place on Election Day. This regulation was necessary to protect the security of the voting equipment and to ensure order and decorum in

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

the polls. Mr. Torre reported that no public comments were received. Ms. Beck made a motion to adopt these regulations as proposed, and Mr. Boston seconded the motion. The Board unanimously approved the adoption of these regulations as final regulations.

The published changes to Regulation 33.12 removed references to voting systems no longer used in Maryland, altered the recount options available for the optical scan voting system and the Direct Recording Electronic voting system, and required the local boards and election directors to follow the administrative and technical recount procedures. Mr. Torre reported that no public comments were received. Mr. Boston made a motion to adopt these regulations as proposed, and Ms. Beck seconded the motion. The Board unanimously approved the adoption of these regulations as final regulations.

Mr. Torre presented for publication as proposed action changes to Regulation 33.08.02.01. The purpose of this proposal is to clarify the uniform definition of a vote on a Direct Recording Electronic voting system. Mr. Burger confirmed that these proposed changes incorporate the "cast ballot" language. Mr. Burger made a motion to submit these regulations for publication, and Mr. Boston seconded the motion. The Board unanimously approved the motion to publish these regulations as proposed action.

PRESENTATION OF SAMPLE BALLOTS

Mr. Goldstein noted that several sample ballots and other relevant information were included in the meeting materials. Mr. Raynor had requested this information for Board review. Mr. Raynor stated that he was interested in establishing guidelines so that the sample ballots would be more standardized. Ms. Walker stated that she and Ms. Duncan were in the process of developing recommendations for minimum requirements for sample ballots and that they will present their recommendations at a future Board meeting once the members have had the opportunity to review the materials distributed at the meeting.

Ms. Woodside reported that she neglected to include in her IT report that Accenture's contract with the agency expires at the end of January. Mr. Burger thanked the Accenture personnel for their valued service.

OLD BUSINESS

Ms. Beck stated that she was resigning as Vice Chair for personal reasons.

NEW BUSINESS

Mr. Burger reported that Ms. Wideman was unable to attend today's meeting as she was out-of-state on business. Ms. Beck confirmed the date and location of the Lessons Learned workshop, which is Tuesday, January 18, 2005, at the Marriott Waterfront Hotel in Annapolis. Ms. Beck apologized that she would be unable to attend the MAEO meeting on Wednesday, January 12, 2005, but stated that she continues to be interested in future meetings.

JANUARY 11, 2005

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

SCHEDULING OF NEXT MEETING

The next meeting of the State Board will be held on Tuesday, February 15, 2005, at 1:30 p.m.
[The meeting was subsequently rescheduled for Monday, February 14, 2005, at 1:30 p.m.]

ADJOURNMENT

Ms. Beck made a motion to adjourn the meeting. The meeting was adjourned at 2:50 p.m.

Gilles W. Burger, Chairman