

November 14, 2005

State Board Meeting  
151 West Street, Suite 200, Annapolis, MD 21401-0486

Attendees: Gilles Burger, Chairman  
Joan Beck, Member  
A. Susan Widerman  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Mark Davis, Assistant Attorney General  
Donna Duncan, Director of Elections Management  
Nikki Trella, Election Reform Director  
Mary Cramer Wagner, Director of Voter Registration  
Michael Kortum, Director of Information Technology  
Joe Torre, Procurement Officer  
Jessica Jordan, Agency Budget Specialist  
Jared DeMarinis, Director of Candidacy and Campaign Finance  
Terry Harris, Deputy Director of Candidacy and Campaign Finance  
John Clark, Voter Registration System Project Manager  
Patrick Stauch, Voting System Project Manager  
Jaimie Jacobs, Election Reform Deputy Director  
Natasha Walker, Election Management Assistant  
Mary Dewar, Voter Outreach Coordinator

Also Present Jeremiah M. Brandt, Anne Arundel County Board Member  
Larry Johnson, Baltimore County Voter  
Sara Harris, Deputy Election Director for Montgomery County  
Tom Fleckenstein, State Board of Elections Appointee  
Tom Feehan, Maryland Diebold Project Manager  
John Spiers, Diebold Regional Manager  
Richard Kidd, Diebold Regional Manager

## **DECLARATION OF QUORUM PRESENT**

Mr. Burger welcomed those in attendance and opened the meeting at 1:37pm with a quorum present. Ms. Widerman welcomed Mr. Burger back from his election observation mission in Azerbaijan and asked that he brief the members on the trip.

## **APPROVAL OF MINUTES OF MEETING OF October 18, 2005**

On a motion by Ms. Beck, seconded by Ms. Widerman, the minutes of the October 18, 2005 meeting were approved.

## **ADMINISTRATOR'S REPORT**

### Staff Announcements

Ms. Lamone announced that Barbara Whitfield will be joining the staff as the new front desk receptionist on November 16<sup>th</sup>. The Candidacy and Campaign Finance Division will begin recruiting for a vacant full time position in that Division. The IT Division will be interviewing a

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candidate for the vacant webmaster position later this week. Ms. Lamone also noted that both Natasha Walker and Jaimie Jacobs have returned from maternity leave.

#### Help America Vote Act

##### *- HAVA State Planning Committee*

Ms. Lamone reported that the HAVA State Planning Committee approved the proposed text revisions to the State Plan. The revised pages will be submitted shortly for publication in the *Maryland Register*. After publication in the State and review of public comment, the revised plan will be submitted for publication in the *Federal Register*. The revised plan will be effective 30 days after publication in the *Federal Register*. Generally, the revisions were made to reflect budget changes.

##### *- Grant Reports*

Ms. Lamone reported that a financial report for the grant to improve accessibility for individuals with disabilities is due on November 30, 2005. This report period covers September 2003 through August 2004. Comments on the report and explanation are requested by November 18<sup>th</sup>. Additional financial reports and a narrative report will be due on December 31, 2005, and will be distributed prior to submission.

##### *- Voter Outreach*

Ms. Lamone reported that the Baltimore City Board of Elections signed off on beginning voter outreach events in Baltimore City. With this approval, Diebold will begin identifying locations, scheduling events, and hiring and training facilitators for voter outreach events.

#### Candidacy and Campaign Finance Division

Ms. Lamone reported that as of November 8, 2005, 58 candidates have officially filed for office. She also informed the Board that the Candidacy and Campaign Finance Division has completed 3 compliance trainings. The trainings cover the important compliance issues such as reporting requirements, contribution limits and responsibilities for the Chairman and Treasurers. Over 100 people have attended so far. Due to the overwhelming response, two more trainings are scheduled in the future. The last training class for 2005 will occur on December 13.

Ms. Lamone also noted that the Division has completed its Supplemental Summary Guide and has made it available on the website. The Supplemental Summary Guide updates and compliments the Blue Book Summary Guide. Additionally, the new and improved User Guide for ELECTrack, complete with step by step instructions and graphics is available online. If committee officers are unable to access the Internet, the Candidacy and Campaign Finance Division will offer computer disks containing both guides.

Ms. Lamone reported that the deadline for amendments for the 2005 Annual Report audits is November 18. The Candidacy and Campaign Finance Division sent out deficiency notices to 440 committees, of which 147 have filed amendments. However, as the deadline approaches, the response rate has increased. If the committees fail to amend, late fees could be assessed.

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Budget

Ms. Lamone reported that on Monday, November 7<sup>th</sup>, Joe Torre, John Clark, Nikki Trella, Jessica Jordan, and she were asked to meet with a group of budget and IT staff from DBM to review the agency's budget and major projects in the fiscal 2007 budget year. The meeting focused primarily on the costs associated with the voting system and the use of federal funds for these projects. Joe explained the services included in the Diebold contract and why it is imperative to have these resources available since we are understaffed for a project of this size. Ms. Lamone stated that the meeting also covered the HAVA State Plan and the reasons the agency constructed our budget to meet the demands of HAVA. While we will not know the outcome of the meeting until late December, it was helpful to discuss some of the budgeting and staffing challenges we face and the necessity of the successful implementation of our major projects.

Voting System Implementation

*- Phase III (Baltimore City)*

Ms. Lamone told the Board that the voting system team is reviewing the details of the statewide master schedule and work plan. The completed document will be distributed to the local boards for review and comment.

Ms. Lamone also reported that the Phase III equipment is arriving at the Diebold Warehouse, where it will be upgraded and tested by an Independent Verification and Validation (IV&V) team. The voting system team has configured both GEMS servers for Baltimore City. The voting system team will work with Baltimore City to perform the User Acceptance Testing on the new servers.

The voting system team is documenting the end-to-end activity of the voter outreach and upgrade efforts. This includes documenting the strategy applied to both activities.

*-Phase I – Equipment Refresh*

Ms. Lamone stated that the Equipment Refresh activity is progressing well. All voting units for Allegany, Dorchester, and Montgomery Counties have been sent to the Diebold service center and returned. All Montgomery County voting units have been accepted. The voting system team is in the process of planning the IV&V activity for Allegany and Dorchester counties. Prince George's county refresh is on schedule to be completed by the end of November.

*-Voting System Software Upgrade*

Ms. Lamone reported that the voting system team performed User Acceptance Testing on BallotStation version 4.5.4 and GEMS version 1.19.24 on October 27<sup>th</sup>. The Voting System team would like to thank Anne Arundel, Baltimore County, Baltimore City, Howard, Prince George's and Montgomery counties for participating in the testing. The voting system team is planning the statewide rollout strategy with the local boards and Diebold.

Governor's Commission

On October 31, 2005, the Governor's office announced that the Governor had issued an executive order to establish the *Governor's Commission on the Administration of Elections*. The Commission

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primarily will be focused on examining legislative proposals including laws effecting provisional voting, early voting, voter identification and paper trail for the voting system.

The first meeting of the Commission was held on November 2, 2005.

Dr. Daniel Calingaert, Associate Director for Democracy and Election Management at American University and consultant to the Carter-Baker Commission, provided the Commission with an overview of the findings of the work of the Carter-Baker Commission. On the early voting issue, Dr. Calingaert noted that most of the research indicated that early voting generally does not increase voter turnout for state and federal elections (however, some improvement has been noted at local elections). On the provisional voting issue, Dr. Calingaert noted that in several states the decision on whether a provisional ballot should be counted is left up to local jurisdictions. The Carter-Baker Commission strongly recommended that uniformity within states be established. However, the Carter-Baker Commission did not take a position on the issues of what to do when a voter votes a provisional ballot at the wrong precinct. On the issue of Voter Verified Paper Audit Trails (VVPAT), Dr. Calingaert stated that the Carter-Baker Commission easily reached a consensus in making a recommendation in favor of VVPAT. While the Carter-Baker Commission recognized that the DREs work well, the issue of confidence and security were of utmost importance. Ms. Lamone noted that this statement is not accurate. The decision by the Carter-Baker Commission was not easy or unanimous and ultimately ended up by advocating for a paper trail or some other verification methodology. Mr. Burger noted that he believed Maryland has the most extensive verification testing program in the country and noted that the Commission's call for a paper trail or other verification methodology was not influenced by Maryland's current administrative capability.

Next, the Governor addressed the Commission. The Governor noted the need to look at the elections administration issues in a comprehensive and non-partisan manner. He also encouraged the Commission to develop strong and unanimous recommendations.

Finally, the Commission received a briefing by Doug Chapin of ElectionLine.org. Mr. Chapin noted several trends in elections administration, most notably that it has become more politicized, that a research community is developing, and that the Federal government is more involved in imposing mandates and, for the first time, providing funding. However, further funding is not expected.

The Commission held its second meeting on Monday, November 7. Ms. Lamone was asked to provide the Commission with a briefing on the administrative issues involved in implementing early voting. Copies of the remarks were provided to the Board in advance of the meeting. Doug Chapin also briefed the commission on early voting and specifically discussed and provided copies of the MIT report on early voting by Adam Berinsky. Finally, Professor Don Norris briefed the Commission on the study he is conducting on vote verification.

The Commission has scheduled a visit to SBE for November 15<sup>th</sup> at 1:30 p.m. The Commission would like to see a demonstration of the voting system and the voter registration system. Mr. Burger noted that he would not be able to attend, but stated that it was important for one of the Board

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members to be at the site visit to meet and greet the Commission. Joan Beck indicated that she would attend.

#### Electronic Poll Books

Ms. Lamone reported that Patrick Strauch observed the Diebold Electronic Poll Books at the City of Belair election November 8<sup>th</sup>. The electronic poll books were a big hit with the three book judges. They had nothing but praise for the technology. All three judges said the electronic poll books were easy to use and training time was minimal. No problems were reported throughout the day.

The electronic poll books were networked together so when one poll book marked the voter, the other poll book was updated simultaneously. The electronic poll books also encoded the voter access cards. Accordingly, no encoders were necessary. Additionally, the electronic poll books printed the voter authority cards. Back-up cards were available at the precinct just in case, but were not used. The electronic poll books worked flawlessly throughout the day. Ms. Beck questioned whether long lines would be created if only two electronic poll books were used per precinct. Ms. Lamone responded that by eliminating the need for alpha breakdowns, a lot of time is saved. It was also noted that Bel Air used only 2 electronic poll books and a back-up electronic poll book without incident. Mr. Burger noted that it will probably be necessary for the Board to establish guidelines for the number of units used in each precinct based on the number of registered voters in that precinct (similar to the guidelines for the number of voting units per registered voters).

Ms. Lamone recognized the fantastic job that Molly Neal and Richard Kidd, Diebold's Regional Manger, did planning for and preparing the electronic poll book and this pilot was a big success. Mr. Burger also thanked Ms. Neal for inviting the Board to attend the pilot demonstration.

#### Voter Registration

##### *-Testing*

Ms. Lamone reported that the second phase of user acceptance testing has been completed. The testing team, made up of State and local staff, verified that there is a working statewide Voter Registration System in MDVOTERS. There are modules, such as absentee voter tracking and election worker tracking that will be perfected in Phase 2 (after January).

##### *-Connectivity*

Connectivity problems with the system have been noted. Michael Kortum and Saber technicians are working to identify the causes and solutions for system slow response times at LBE offices.

##### *-Reports*

The project reports committee has identified 6 reports that are required to be available for the initial implementation. There are 24 additional reports available in the production version. Further reports and ad-hoc reporting capabilities will be available in Phase 2 after January.

##### *-Training and Data Migration*

The first wave of counties to begin to use the MDVOTERS for production purposes are Baltimore City, Montgomery, Howard, Carroll, Talbot Counties. Training and final data migration has begun

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in these counties. The “go-live” date is November 15<sup>th</sup>, but will be pushed back to Friday or Monday due to the need to confirm the accuracy of the data migration.

The Executive Steering Committee met and decided to move forward with the implementation schedule of MDVOTERS with Load and Stress testing at each of the 5 waves. This allows us to move forward confidently, yet cautiously, to a solid statewide system. Full implementation is still anticipated for January 1, 2006.

### **ASSISTANT ATTORNEY GENERAL’S REPORT**

Mark Davis reported that in the *Schade v. SBE* case, the Court has ordered the parties to agree on the name of a special master to resolve discovery disputes. Mr. Davis noted that staff had been instructed to comply with the electronic discovery request of the plaintiffs (which had been on hold). This is a very broad request that is in addition to the 18,000 pages of discovery already turned over to the plaintiffs. The local boards of election have also been instructed to search for documents responsive to plaintiffs' requests. Mr. Davis also noted that parties would attend a mediation session.

Mr. Davis then addressed the *Maryland Green Party v. Maryland Board of Elections* case, which involves an effort to obtain attorneys’ fees. This is being appealed to the Court of Appeals since it creates a staggering precedent for awarding such fees.

Regarding *Acorn v. Burger*, Mr. Davis informed the Board that the issue had been settled and he is awaiting dismissal from the circuit court.

Finally, in *Stysley v. Carroll County Board of Elections*, the Green Party is seeking \$45K in attorney’s fees for denial of ballot access. A motion to dismiss has been filed by the defendants who argue that the plaintiff’s suit is not timely.

Mr. Burger asked for clarification on the issue of a candidate serving as chairman of his or her own committee. Mr. Davis responded that the advice was still pending.

### **REGULATIONS**

Ms. Trella referenced the memorandum she distributed summarizing the proposed regulations and flowcharts. She noted that the Board had previously adopted at its August 2005 meeting proposed changes to 33.05.04 and that the proposed changes before the Board were amending the same section. Ms. Trella explained that the proposed regulations incorporate the prior amendments as well as place definitions for common terms in the general definition chapter and provide a way for an applicant whose driver’s license or social security number cannot be verified to register to vote. Chairman Burger made a motion to adopt the proposed regulations, and Ms. Beck seconded the motion. The motion passed unanimously.

### **WAIVER OF CAMPAIGN FINANCE LATE FEES**

The Board reviewed two requests for reconsideration of the decision by the State Administrator to deny the waiver of late fees. The Board, on a motion by Mr. Burger and seconded by Ms. Beck, concurred with the Administrator’s decision to deny the requested waivers of both the *St. Mary’s*

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*County Democratic Central Committee* and the *Montgomery County NOW PAC*. Mr. Burger thanked Ms. Harris for including a memorandum that outlines the factors the board generally considers when determining whether to grant a waiver request.

Ms. Widerman asked whether notice is provided to a committee when one of the officers resigns. Ms. Harris responded that notice is provided. The Board and staff then discussed the fact that an officer who resigns in the middle of a reporting period remains responsible for the report due immediately after his or her resignation.

#### **REQUESTS FOR CONFIDENTIALITY**

Terry Harris next presented the Board with 12 requests for confidentiality. Eleven of the requests were from Law Enforcement Personnel and the other one is from an individual seeking confidentiality under the "Person Being Threatened" category. The Board, on a motion by Ms. Widerman and seconded by Ms. Beck, granted all 12 requests.

#### **ADMINISTRATIVE CLOSURE OF CAMPAIGN FINANCE ENTITIES**

Mr. Burger stated that this issue would not be addressed until the next meeting.

#### **NEW BUSINESS**

Mr. Burger asked Joe Torre whether all of the expenditure approvals were still pending. Mr. Torre stated that while other approvals had been received, the approval for an expenditure for hardware maintenance (Hewlett Packard) still needed to be signed. Mr. Burger signed the forms.

Mr. Burger thanked the staff for including the biennial feedback forms. He noted that the majority were positive. However, there was a lack of constructive feedback.

Ms. Widerman raised an issue that had been presented to her by Barbara Hall of Dorchester County. Ms. Hall stated that the absentee voting application does not present a reason that a "shut-in" could use to obtain an absentee ballot. Ms. Widerman suggested that the Governor's Commission look at this issue. It was decided that Ms. Widerman write to the Commission to ask them to review this issue.

Jeremiah Brandt, member of the Anne Arundel County Board of Elections, raised the issue of requiring new registrants to provide proof of citizenship prior to registering to vote. Mr. Brandt noted that board members are commissioned to protect the voting process. Mr. Brandt feels that when it comes to voter registration and citizenship, we are essentially on the honor system. Instead, Mr. Brandt urged election officials to do more to ensure that only citizens are allowed to register and vote. Mr. Brandt stated that the Board should use its authority to create a policy that would require local boards to only accept a new registration upon proof of citizenship. Ms. Beck acknowledged her strong agreement with Mr. Brandt's view that when non-citizens vote it waters down the process and erodes the importance of her vote and the vote of other citizens. However, Ms. Beck questioned whether this requirement would create a hardship for some individuals and therefore be subject to challenge. Mr. Brandt stated that proof of citizenship would only discriminate against non-citizens. Mr. Brandt acknowledged that this requirement may result in a minimal increase in the workload of

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local election officials and some additional costs, but they are well worth it to keep the voter registration process pure. Mr. Burger thanked Mr. Brandt for raising the issue and stated that he wanted the opportunity to think about the proposal.

Mr. Burger then invited Mr. Larry Johnson to address the Board. Mr. Johnson stated that he was a Baltimore County voter who felt that the voting system should provide voters with a receipt. In Mr. Johnson's view, having a receipt would provide proof that he voted and would confirm the accuracy of the system. Mr. Johnson noted that receipts are given when shopping. Mr. Burger noted that receipts have never been given to voters in the past. Mr. Brandt responded that the fact that it had not been done in the past does not diminish the importance of providing receipts now. Mr. Burger thanked Mr. Brandt for presenting his views to the Board.

The Board agreed to hold the next meeting on December 20<sup>th</sup> at 1:30pm.

**ADJOURNMENT**

The meeting was adjourned at 3:30p.m.

Mr. Burger briefed the Board on his trip to Azerbaijan. The U.S. Department of State sponsored Mr. Burger's observation of the November 6, 2005 parliamentary elections. The 500-member international Election Observation Mission was conducted by the Organization for Security and Cooperation in Europe (OSCE). Mr. Burger provided some background on the history, geography, media, political, and campaign landscape of this post-Soviet republic. Mr. Burger then explained OSCE's monitoring framework and his role in the mission. All participants randomly monitored a polling station opening; the voting process in a number of polling stations throughout the day, a polling station closing process and its ballot counting process, and tabulation of results. Although personally witnessing a number of minor voting irregularities, other observers witnessed significant instances of fraud, especially in counting and tabulation, resulting in a dissatisfactory statement of preliminary findings and conclusions issued by the OSCE on November 7. The report can be found on OSCE's website: <http://www.osce.org/odihr/> with a final report due in December.