

OCTOBER 18, 2005

STATE BOARD MEETING

PRINCESS ROYALE, 9100 COASTAL HIGHWAY, OCEAN CITY, MD 21842

Attendees: Gilles Burger, Chairman  
Joan Beck, Member  
A. Susan Widerman, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Mark Davis, Assistant Attorney General  
Donna Duncan, Director of Elections Management  
Jessica Jordan, Budget and Personnel Director  
Michael Kortum, Chief Information Officer  
Joe Torre, Voting Systems Director  
Nikki Trella, Election Reform Director  
Mary Wagner, Director of Voter Registration and Petitions

Also Present: Tom Fleckenstein, State Board appointee  
Garry Voith, President, Anne Arundel County Board of Elections  
Jeremiah M. Brandt, Board Member, Anne Arundel County  
Barbara Fisher, Election Director, Anne Arundel County  
Carole Streeting, Deputy Director, Anne Arundel County  
Charlotte Rader, Anne Arundel County Board of Elections  
Bill Varga, Counsel, Baltimore City Board of Elections  
Griffith Manahan, Board Member, Carroll County  
Donald Pennington, Substitute Member, Carroll County  
Charles Foreman, Substitute Member, Carroll County  
Barbara Hall, Dorchester County Board of Elections  
Stuart Harvey, Election Director, Frederick County  
Edward Yoder, President, Harford County Board of Elections  
Gregory Seltzer, Board Member, Harford County  
Guy Harriman, President, Howard County Board of Elections  
A.P. Buehrle-Hill, Substitute Member, Montgomery County  
Betty Ann Lucey, Montgomery County Board of Elections  
Paul Vallette, Montgomery County Board of Elections  
Sara Harris, Montgomery County Board of Elections  
John F. Lucey, Montgomery County resident  
Pat O'Hara, EDS  
Michelle Davis, Department of Legislative Services  
Debra Mosier, Diebold Election Systems, Inc.

#### **DECLARATION OF QUORUM PRESENT**

Chairman Burger called the meeting to order at 2:03 p.m. Mr. Burger thanked Linda Lamone and the staff for an outstanding conference. He noted that the biennial conference was the best conference since he has been a member of the State Board. Mr. Burger also recognized Tom Fleckenstein, a nominee to the State Board.

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## **APPROVAL OF MINUTES OF MEETING OF AUGUST 30, 2005**

Ms. Beck made a motion to approve the minutes from the August 30, 2005, meeting. Ms. Widerman requested an amendment on page 10, and Mr. Burger requested an amendment on page 4. Ms. Beck amended her motion to approve the minutes as amended, and Ms. Widerman seconded the motion. The amended minutes of the August 30, 2005, 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.

### **1. General Information**

#### House Ways and Means Committee Briefing

The House Ways and Means Committee requested a briefing on October 5, 2005, primarily to receive information on any upcoming election issues and an update on the efforts to study vote verification. Regarding upcoming election issues, Ms. Lamone noted that there were no specific issues to report, but provided the Committee with a general reminder that any legislation that effects the 2006 election must either be given an early effective date or be passed as emergency legislation. The committee chairman noted that, in her opinion, emergency legislation was the most prudent way to proceed. Ms. Lamone also provided them a brief overview of the study and indicated that the partnership with the University of Maryland, Baltimore County (UMBC) and other Maryland institutions has been very beneficial and a model for future projects.

Ms. Lamone reported that she recently met with Brit Kirwan, Chancellor of the University System of Maryland, to brief him on the collaboration between SBE and various institutions within the University System. Chancellor Kirwan was enthusiastic about this partnership and looked forward to continuing to work together.

Professor Don Norris, the lead UMBC researcher for the vote verification study, provided the Ways and Means Committee with a more in depth-overview of the study and what it will accomplish. Dr. Norris noted that there has not been any meaningful research on the subject of verification and that much of the debate centers on assumptions. He and his team of researchers will base their conclusion on sound research, which will be a useful tool for policy makers. Dr. Norris' presentation was very well received.

A representative from Johns Hopkins was also at the briefing to discuss a recent grant received by JHU for studying voting. Also at the briefing was Doug Chapin from electionline.org who discussed issues surrounding early voting.

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#### American Academy for the Advancement of Science

Ms. Lamone reported that she participated at a September 29<sup>th</sup> meeting of the American Association for the Advancement of Science (AAAS), Committee on Scientific Freedom and Responsibility, an external Committee that advises AAAS on issues related to the professional and social responsibilities of scientists and engineers. She was asked to speak on the legal framework in which elections take place, emphasizing the different roles and responsibilities of federal, state, and local jurisdictions. Ms. Lamone participated with AAAS last year on the topic of election reform. That meeting resulted in the publication of “Making Each Vote Count: A Research Agenda for Electronic Voting.”

#### National Institute of Standards and Technology

On October 7<sup>th</sup>, Ms. Lamone gave remarks to the National Institute of Standards and Technology’s (NIST) “Developing an Analysis of Threats to Voting Systems” in Gaithersburg. She was asked to provide the attendees with the processes involved in compiling the unofficial election results on election night and with the processes and checks and balances involved in the entire canvass of the official results. Ms. Lamone also participated on the final panel of the day to summarize the preceding panels and what actions NIST should take. Michael Kortum and Paul Aumayr also attended the seminar.

#### Legislation

All twelve of the Board’s proposed departmental legislation were submitted to the Governor’s office and have been accepted for submission. The next step is for the appropriate House or Senate Committee to sponsor the legislation.

## **2. Help America Vote Act (HAVA)**

#### HAVA State Planning Committee

The HAVA State Planning Committee met on October 6, 2005, to discuss the proposed revisions to the State Plan. The proposed changes were necessary to reflect the actual costs of the HAVA mandated projects and amount of federal funds received. The Committee discussed the proposed changes and agreed to the revised HAVA State Plan budget. The specific pages of the State Plan will be amended for publication in the Maryland Register and the Federal Register. The revised plan will be effective 30 days after publication in the Federal Register.

One of the proposed revisions to the State Plan was for the State to use federal funds to pay for all of maintenance costs of the current Saber contract. This represents approximately \$5.2 million through fiscal year 2011. The counties will be responsible for paying any ancillary costs relating to the voter registration system (estimated at \$2.0 million through fiscal year 2011). A letter of understanding with the Maryland Association of Counties will be drafted to formalize this agreement.

#### Election Judges’ Manual and Training Curriculum Update

Work on the election judges’ manual is continuing. Most of the local boards have provided comment on the sections that contain county-specific instructions, and the uniform sections are being streamlined. The challenge continues to be developing a statewide election

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judges' manual when there are non-uniform procedures, particularly in the check-in process and the forms to capture information changes.

The election judges' training curriculum is also progressing. The basis of the statewide curriculum will be the redesigned judges' manual and will include instructor's notes. The Election Judges' Training Curriculum Committee has discussed how judges' training is conducted (precinct-based v. module based), the format of the instructor's guide, performance incentives for election judges, and evaluation of training sessions.

### **3. Voting System**

#### Voting System Implementation – Phase III (Baltimore City)

Forty voting units for use in public demonstrations have been delivered to Baltimore City, enabling the City to begin their voter outreach efforts 11 months prior to the 2006 Gubernatorial Primary Election. Mary Dewar trained the voter outreach staff on the voting units, and they are prepared to begin conducting public demonstrations with the new upgraded software.

The voting system team is finalizing the details of the statewide master schedule and work plan. The documents will be distributed when completed.

#### Phase I – Equipment Refresh

The equipment refresh activity is progressing well. Phase I units are shipped to the Diebold facility for the hardware refresh on a regular schedule and are being returned promptly. Before the refreshed voting units are returned to the Phase I counties, IV&V teams verify the hardware refresh. The teams are testing an average of 200 voting units a day.

All voting units from Montgomery County have been sent for the hardware refresh. All Montgomery County's units will be returned by the end of October. Voting units from Dorchester and Allegany Counties have been sent out for hardware refresh and should be returned by the first week of November. Prince George's County's refresh is in progress and will be completed by the end of November.

#### Voting System Software Upgrade

SBE is performing User Acceptance Testing on BallotStation version 4.5.4 and GEMS version 1.19.24. The BallotStation software has many new features, including user-selectable magnification of the ballot and high contrast for visually impaired (color blind) voters. The voting system team will be contacting certain counties to assist SBE with the User Acceptance Testing. The voting system team is in the initial stages of planning the statewide rollout of the new software. Once the software has been accepted, the local boards will be contacted to schedule the upgrades for their jurisdiction.

#### County Information Systems Specialist (Country IT position)

The voting system team is developing a comprehensive training outline for the county IT position pertaining to the statewide voting systems. This outline identifies the training

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requirements and recommends training materials to reduce the learning curve for the specialist.

#### Vote Verification Study

The vote verification study is well underway. The researchers have received in-depth presentations by all of the vendors and have begun to collect equipment and documentation for testing. Ms. Lamone noted that the University of Maryland at College Park obtained a grant and will be moving ahead with the usability study and that the representatives of NIST have attended all of the presentations.

### **4. Candidacy and Campaign Finance**

#### Candidate Filings

As of October 11, 2005, 46 candidates have officially filed for office.

#### Audit

The Candidacy and Campaign Finance Division has completed its audit of the 2005 Annual Reports. Of the 1,030 campaign finance entities that filed reports, 441 have deficiencies. This percentage is high due to the expansive range of the deficiencies. Deficiencies range from the technical, for example, missing a signature or an incomplete address to the more serious, for example improper expenditures and differing cash balances. The committees have 30 days to respond to the notices and correct the deficiencies. If the committees fail to amend, late fees could be assessed.

#### Classes

The Candidacy and Campaign Finance Division is offering training classes on compliance and the use of ELECTrack to the candidates, treasurers and chairmen. Currently, there are three scheduled classes. The first class is Saturday, October 22<sup>nd</sup> for the Republican Party. The next class is October 25<sup>th</sup> and is open to all candidates, treasurers and chairman.

### **5. Voter Registration**

#### MDVoters Project

User Acceptance Testing Cycle 1 was completed on September 26<sup>th</sup>. Pilot election testing began on September 28<sup>th</sup> and concluded on October 7<sup>th</sup>. Anne Arundel, Carroll, Harford, Montgomery, and Talbot Counties, as well as members of the User Acceptance Committee, SBE and Saber staff, participated in the pilot election testing. The issues reported by the UAT Committee during testing and the LBEs during the Pilot Test were captured by Saber staff and recorded in the JIRA issue-tracking system for resolution.

From September 26<sup>th</sup> through October 7<sup>th</sup>, testing of the two MDVOTERS data centers was conducted under the direction of the SBE CIO and IT Division staff. All tests performed at the Voter Registration Operations Center (VROC) in Annapolis and at the "hot" Continuity of Operations (COOP) site in Cumberland passed initially or upon retesting. The State Deputy CIO Greg McKibben and his staff provided DBM oversight of the VROC testing. Glenn Newkirk of InfoSentry, the IV&V Contractor, oversaw the testing of the COOP site

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in Cumberland (10/3 to 10/7). A post-pilot meeting was held on October 12<sup>th</sup> to discuss the pilot election findings as well as outlining how the MDVOTERS project would be moving forward.

Saber's Data Migration Team has been meeting with the 19 non-pilot LBEs to review their first set of conversion and migration reports. Ms. Lamone reported that the meetings have been going well with the non-pilot LBEs.

User Acceptance Testing Cycle 2 is scheduled to begin October 20<sup>th</sup> through November 4<sup>th</sup> with the software rollout beginning on November 7<sup>th</sup>.

#### Voter Registration – Nursing Home & Assisted Living Facilities

Recently, Donna Duncan, Mary Wagner, and Nikki Trella met with representatives of LifeSpan and Health Facilities Association of Maryland (HFAM), both of which are trade associations representing senior care providers in Maryland. LifeSpan and HFAM are interested in conducting voter registration drives in their facilities and would like to organize voter registration volunteer trainings in each county to train each facility's activities or social director. It is hoped that the trainings can be completed during the first several months of 2006. In addition to providing trained voter registration volunteers in each facility, this collaborative effort should assist the local boards in their outreach efforts for absentee voting. The goal of the State's program is to ensure that trained people, not candidates, help residents of nursing homes and assisted living facilities register to vote.

After Ms. Lamone's report, Ms. Beck inquired about the campaign filing software. Ross Goldstein reported that there have been no major complaints with the current version of the software.

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

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

##### **Litigation**

*Schade v. SBE* (Cir. Ct. for Anne Arundel Co.) – Fourteen motions are pending, and it is expected that the judge will begin scheduling hearings on the motions shortly. The parties will participate in court-ordered mediation.

*Maryland Green Party v. Maryland Board of Elections* (Court of Special Appeals) – The Court of Special Appeals ruled in favor of the Green Party on October 7, 2005. The Attorney General's Office is likely to file a petition for certiorari, and the Court of Appeals is likely to take the appeal.

*Hufnagel v. State Board of Elections* (Circ. Ct. for Anne Arundel Co.) – A hearing on the motions is scheduled for October 31, 2005. The Attorney General's Office is trying to get the case dismissed.

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In the *Fox* administrative action, the administrative law judge upheld SBE's position that the full SAIC report need not be disclosed.

*Stysley v. Carroll County Board of Elections* (Circ. Ct. for Carroll Co.) – In the 2000 election, a Green Party candidate was denied access to the ballot as a candidate for the Carroll County Commissioners. The Court of Appeals issued a per curiam decision granting the Green Party candidate ballot access. Recently, the plaintiff filed a request for attorney fees.

### **REQUEST FOR APPROVAL OF REGULATION PROPOSED FOR WICOMICO COUNTY**

Mr. Burger noted that the existing information about political activities of local board members could be refreshed but expressed his concern that the local regulations proposed by Wicomico County may not provide any more clarity. Mr. Goldstein suggested that establishing ethical standards would be an appropriate activity for the Maryland Association of Election Officials (MAEO). Mr. Burger supported this suggestion. Barbara Fisher, MAEO President, agreed to take this proposal to the MAEO board for discussion. Mr. Burger requested that the MAEO Board notify SBE of its discussion.

Mr. Burger noted that the Board's view on political activity is that the more politically active a Board member is, the less effective the Board member will be in his or her official capacity. Ms. Beck questioned why SBE needs to be involved in the setting of local standards, and Mr. Davis cautioned that the scope of the regulation could subject the local board and SBE to litigation. Mr. Burger encouraged the local board attorneys to participate in the standards process.

Mr. Burger recommended taking no opinion on the proposal local regulation. Mr. Davis noted that the Election Law Article requires that the State Board approve the local regulation for it to be effective locally for Wicomico County. Ms. Lamone expressed her concern that this might set a bad precedent and open the local boards and SBE to litigation risks. She recommended taking a broader look at the issues, rather than addressing them in a piecemeal way. Mr. Burger expressed that there was no interest in approving this local regulation for just one local jurisdiction. Ms. Beck requested that a letter be sent to the Wicomico County Board of Elections explaining the Board's position.

### **OLD BUSINESS**

Ms. Beck requested a copy of the proposed legislation submitted to the Governor's Office. Mr. Goldstein stated that he would provide her with the synopses of the proposals.

### **NEW BUSINESS**

Ms. Beck complimented Ms. Lamone and the staff members for an excellent conference. She noted that the breakout sessions were very informative and reported that she received a comment that staff members always provide answers to questions. If the staff member

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does not know the information, Ms. Beck relayed that the individual will get the answer and respond. Ms. Widerman reported that she was pleased with the level of local board involvement in the MDVOTERS project and in presentations in the biennial conference.

Mr. Burger noted that a member of the Prince George's County Board of Elections requested talking points to respond to the critics of the voting system and that staff make them available to local jurisdictions for use in public forums. Mr. Burger requested an update on the new State IDs. Jessica Jordan reported that only one batch of ID badges has been delivered. Mr. Burger asked that he be kept informed on the status of the ID badge distribution.

Mr. Burger invited individuals in attendance to discuss any issues with the State Board.

Guy Harriman, President of the Howard County Board of Elections, stated that the conference materials provided in the binder were the best materials of the five biennial conferences he has attended. Mr. Harriman relayed that the Howard County Board of Elections unanimously agreed that the early voting is too much to do right now. Mr. Harriman expressed his concerns with the costs and challenges of recruiting election judges and proposed that no excuse absentee voting would solve the problems that early voting is addressing. Ms. Beck expressed her concern about security during early voting, and Ms. Widerman stated that she had not seen enough benefits of early voting and expressed concern with implementing early voting now. Mr. Burger stated that he had been approached by local boards with concerns regarding early voting and encouraged the local boards to relay their concerns to their State legislators.

Edward Yoder, President of the Harford County Board of Elections, also expressed his concerns about early voting. Garry Voith, President of the Anne Arundel County Board of Elections, noted that his Board will be drafting a letter to Anne Arundel County's delegation to the Maryland General Assembly expressing their concerns. Griffith Manahan, a member of the Carroll County Board of Elections, expressed his concern that introducing more technology into the polling place may result in more concern by the voters. He acknowledged that early voting is the future of voting but that it should be delayed until 2008.

Barbara Fisher, Anne Arundel County Election Director, noted that the biennial seminars were excellent and very beneficial, especially to those local boards not involved in the MDVOTERS pilot election.

Gregory Selzer, a member of the Harford County Board of Elections, explained that the Harford County Board passed a resolution opposing any change to the date of the primary election and submitted it to the county delegation. He noted that the resulting impact of an early primary election would include budget concerns, challenges in recruiting election judges, and a conflict with the Maryland Association of Election Officials' annual conference. Mr. Burger requested that the Harford County Board of Elections share the letter with the State Board, and Mr. Yoder agreed. Mr. Yoder also suggested eliminating any funding targeted toward increasing voter turnout.

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### **SCHEDULING OF NOVEMBER MEETING**

The next meeting of the State Board will be held on Monday, November 14, 2005, at 1:30 p.m.

### **SUMMARY OF CLOSED SESSION ON AUGUST 30, 2005**

The Board met in closed session on August 30, 2005, to consult with staff and counsel about several matters involving pending and potential litigation, an investigation proceeding on actual or possible criminal conduct, a petition for declaratory ruling, and budget recommendations. The closed session was permitted under State Government Article § 10-508(a)(7), (8), (12) and (13). In the open meeting on August 30<sup>th</sup>, Mr. Burger made a motion to hold a closed session, and Ms. Beck seconded the motion. Mr. Burger, Ms. Beck, and Ms. Widerman all voted in favor of holding a closed session.

Mr. Burger, Ms. Beck, Ms. Widerman, Ms. Lamone, Mr. Davis, Michael Berman, Assistant Attorney General, Mr. Goldstein, Jared DeMarinis, Ms. Jordan, and Nikki Trella were present for the closed session. Mr. Berman and Mr. Davis updated the Board on the current status of litigation and discussed their current and expected litigation strategy. During the closed session, the Board agreed to the following: (1) submit departmental legislation allowing individuals who are not affiliated with the principal political parties to serve as election judges and protecting the residential address and home telephone number of a voter who has requested that this information remain confidential; (2) submit to the Department of Budget and Management the agency's budget as presented; (3) refer individuals who may have committed a violation of the Election Law Article to the State Prosecutor; and (4) deny a petition for declaratory ruling.

### **ADJOURNMENT**

On a motion by Ms. Beck, seconded by Ms. Widerman, the public meeting was adjourned at 3:00 p.m.

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Gilles W. Burger, Chairman