

JANUARY 29, 2007

STATE BOARD MEETING
151 WEST STREET, SUITE 200, ANNAPOLIS, MD 21401

Attendees: Gilles Burger, Chairman
Bobbie Mack, Vice Chairman
Joan Beck, Member
Andrew Jezic, Member
Linda Lamone, Administrator
Mark Davis, Assistant Attorney General
Ross Goldstein, Deputy Administrator
Donna Duncan, Election Management Director
Mary Wagner, MDVOTERS Project Sponsor
Joseph Torre, Director, Procurement and Voting Systems
Jessica Jordan, Budget Director
Nikki Trella, Election Reform Director
Jared DeMarinis, Candidacy and Campaign Finance Director

Also Present: Mary Kiraly, MD – EIC

DECLARATION OF QUORUM PRESENT

Chairman Burger called the meeting to order at 1:39 p.m. and declared that there was a quorum present.

OPENING REMARKS

Chairman Burger opened the meeting by announcing that A. Susan Widerman submitted her letter of resignation to the Governor and was not expected to attend this meeting. The Chairman expressed his opinion that Ms. Widerman's contributions to the Board were significant and her efforts were important in serving Maryland voters.

APPROVAL OF NOVEMBER 28th, 2006 BOARD MEETING MINUTES

Ms. Beck asked that page 6, paragraph 3 of the minutes read "Ms. Beck agreed to table the motion..." rather than the current "Mr. Burger agreed..." Mr. Burger made a motion to approve the minutes as amended and Ms. Mack seconded the motion. The minutes of the November 28, 2006 board meeting were approved unanimously.

The minutes from the closed session were read by all members, approved unanimously and signed by the Chairman.

ADDITIONS TO THE AGENDA

There were no additions to the agenda. Mr. Burger asked that item #9 be removed from the agenda as it was an error.

ADMINISTRATOR'S REPORT

Ms. Lamone reported the following information to the Board.

1. Personnel

Janet Smith joined the Voter Registration Division on January 3, 2007. Janet is the Manager of Data Integrity and Reports. She comes to us from the Calvert County Board of Elections where

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she worked for over 5 years. Janet is a valuable addition to SBE and the Voter Registration Division.

Sue Holiway has replaced Robyn Terry as SBE's fiscal officer. She has significant experience working with the State both at DBM and with the Public Service Commission. In just her short time with SBE Sue has proven her ability to learn quickly and help out however she is needed.

Kenya Spann joined the Candidacy and Campaign Finance Division on January 23, 2007. She will be filling the position vacated by Andrea Edwards. She comes from Department of Public Works and has been with the State for over 8 years. She will assist the Division in numerous tasks and looks forward to the challenges and excitement of elections and campaign finance.

2. Voter Registration

Project Planning

The Voter Registration Division has been working with Saber to develop the plan of work to be accomplished in support of the LBEs and on MDVOTERS in 2007. Three releases of new software are planned by July. The Division is mindful of the need to “freeze” the MDVOTERS software prior to the Baltimore City Primary election. Ms. Mack asked for a list of the changes to be made to the MDVOTERS system.

Petition

Staff provided petition processing support to the 24 Local Boards for the Green Party and Libertarian Party petitions.

JAD Sessions

Saber and the Voter Registration Division conducted a four-day Joint Application Design (JAD) session on MDVOTERS. At these workshops, Local Board of Elections representatives, selected by MAEO President Guy Mickley, gave their input to further improve the business processes in MDVOTERS, based on their successful experience in the General Election.

The JAD sessions focused on the areas of election workers, absentee and provisional ballots, elections management, petition processing and reporting. The recommendations made by the Local Board and SBE attendees will be distributed to all LBEs for review and then sent to Saber for development and testing.

The Voter Registration Division thanks the Anne Arundel County Board of Elections for the use of their Annex to host these sessions.

Duplicate Voter Records

Staff worked with Saber in testing a powerful software upgrade that will look for duplicate voter records in the database of registered voters and merging those records. Training of selected individuals from each of the 24 Local Boards to use the new software is now underway.

SAS 70 Audit

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The Division began the procurement for a SAS 70 audit of MDVOTERS. This audit will look at the software development and data center operations responsibilities of the MDVOTERS contractor, Saber Corporation.

3. Help America Vote Act

Joint Election Officials' Liaison Committee (JEOLC) Meeting

Mary Heath attended the Joint Election' Officials Liaison Committee Meeting in Washington, D.C on January 4th and 5th. The meeting focused on new federal legislation, voting system guidelines and standards, HAVA compliance and election mail information from the United States Postal Service.

Metro Washington Council of Governments (MWCOG) Meeting

Ms. Heath attended the Metro Washington Council of Governments meeting on January 12, 2007. Dianna Long of the Montgomery County Board of Elections discussed the poll worker evaluation and peer review programs. Ms. Long presented extensive information on lessons learned from the 2004 Presidential General Election. In addition to this presentation, the group recapped the Joint Election Official Liaison Committee meeting from January 4-5, 2007. The next meeting will be held in Washington, D.C on April 13, 2007.

2006 Election Administration & Voting Survey

The survey required by the Help America Vote Act is due in March. Once the data has been collected and reconciled, it will be distributed to the board members prior to submission to the U.S. Election Assistance Commission. Preliminary residual vote numbers are provided in the folders.

Election Judges' Manual

The 2006 election judges' manual will be used as the baseline judges' manual for the 2007 City elections and the 2008 Presidential elections. Work on the 2007 City election judges' manual will begin shortly. To begin planning the schedule for the 2008 election judges' manual, the local boards were asked to provide the month when they anticipate starting training for the March Presidential Primary Election.

4. Candidacy and Campaign Finance Division

Reporting

On January 1, 2007, the law eliminating personal treasurer accounts and campaign finance report filing with the local boards went into effect. Now, all campaign finance entities must be established and file reports at the State Board.

On January 17, 2006, the 2007 annual campaign finance report covering transactions from November 22, 2006 to January 10, 2007 was due. As of January 25, 2007, the division has received over 1,200 reports or approximately 86% of the number of committees required to file. The remaining committees are still required to file an annual Report and are accruing late fees. The maximum late fee for a failure to file is \$250.

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Additionally, Candidacy and Campaign Finance Division is receiving amendments from an agency audit of the 2006 annual campaign finance report. The Division notified over 450 committees of their deficiencies. Currently, over 50% have filed the required amendments.

Semi-Annual Disclosure Form

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 to a candidate or a person who provides lobbyist compensation and makes campaign contributions greater than \$500, covering the period from August 1 to December 31, 2006, is due on February 5, 2007. The Candidacy and Campaign Finance Division expects to receive over 190 disclosure forms from qualifying persons.

5. Electronic Poll Books

Staff is working with Diebold to complete the electronic poll book contract and issue payment. Staff has determined several outstanding issues that need to be addressed before finalizing the contract. The issues include:

- a. Detailed documentation on the equipment, software, and servers;
- b. Detailed review of the plastic shim added to unit and its long term viability (may require a separate extended warranty);
- c. Completion of connectivity testing that was put on hold after the early voting was cancelled; and
- d. Development of a maintenance plan.

In addition, staff will be setting up a user group meeting to seek input on how best to customize the electronic poll books to meet our needs. The electronic poll book is highly customizable, but there was simply not enough time to do so prior to the 2006 elections. Now that there is more time and experience with the poll books a joint user design session will be very productive. Finally, staff is working to develop an overall electronic poll book project plan.

6. Voting System

System Maintenance

The voting system team is finalizing the Post Election Maintenance procedures for the voting equipment. These procedures have been enhanced from the 2005 procedures to include maintenance on the Memory Card, and charging batteries in the UPS and touchscreen units. The procedures also include sign-off from the election director acknowledging the post election maintenance has been completed successfully. SBE is developing a training program to educate the local boards and staff on the procedures.

The voting system team is working on streamlining the equipment repair process. Currently SBE must validate and accept the equipment when it is returned from the Diebold Repair facility. The new process will have the equipment returned directly to the local boards. The local boards will assume the responsibility to validate the repair was successful and accept the equipment back into the State. SBE Voting System team working with local boards is developing the procedures to formalize this process.

Ballot Development

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The voting system team is investigating using in-state printers to print paper (absentee) ballots. This effort will address the issues surrounding ballot printing in the last election. Having a local printer produce ballots will reduce the lag-time for LBEs to receive their ballots.

The voting system team is investigating in-state audio facilities as well. This will provide a quicker response time for audio changes necessary to produce the ballots in a timely manner.

Contract Management

The voting system team is improving the timesheet reporting vehicle for the Diebold contractual staff to conform to the State audit requirements.

7. Lessons Learned

The first of a series of lessons learned sessions was held on January 24th at the SBE office. The first session was conducted by Jaimie Jacobs and focused on identifying best practices related to recruitment and retention of election judges, the election judges' manual, and training curricula. All twenty-four local boards were represented, and many good ideas were shared and areas of improvement identified. A summary of the session will be provided once it has been completed. The next lessons learned session is scheduled for Wednesday, February 14, 2007, and the topic will be pre-election activities. Mr. Burger requested that the summary of the lessons learned session be distributed as soon as it is complete.

8. Budget

Our budget hearings take place on February 1 in the House and February 2 in the Senate. We are pleased that the budget includes our requested deficiency appropriation for the retraining of election judges and the cost of unanticipated absentee ballot orders. We will be reimbursing the counties for their share of these costs. The budget otherwise funds everything that was requested, albeit with mechanisms that allow the state to put off certain payments until future years.

9. Legislation

SB 1 - *Elective Franchise – Early Voting and Polling Places* - Amends the constitution to provide the necessary authority to the General Assembly to enact early voting laws. In response to a question posed by Mr. Jezic, Ms. Lamone stated that Senator Miller is the primary sponsor of the legislation.

SB 31 - *Elections – Voter Registration and Voting – Age* - Allows a person to register to vote at 16, but still provides that voting is not permitted until 18.

SB 46 - *Election of Circuit Court Judges – Non-Partisan Elections* - Provides for non-partisan election of Circuit Court Judges.

SB 63 - *Voter's Bill of Rights* - Requires a paper trail and 5% audit of paper trails. Establishes a required posting of a document concerning a voter's rights as they relate to voting. States that fraud, stratagem, or ruse, may not be used to influence a voter not to register to vote or to change the way the voter votes. Mr. Jezic asked if different versions of the Voter's Bill of Rights existed in the House and the Senate. Mr. Goldstein explained that the House version included specific

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language on optical scan voting with certain audit requirements and that machine errors must be posted. The Senate version is more open-ended regarding the form of paper trail and includes prohibition against affecting someone's vote. Mr. Burger asked about the House version of the voter's bill of rights. Ms. Trella responded that State law and HAVA require a bill of rights be posted in polling places. Mr. Goldstein added that the language in the bill should have been the same language established by HAVA so that the Voter's Bill of Rights could be one document. Ms. Lamone informed the Board that information provided to Board members includes an update on all election legislation.

SB 77 - Election Law – Rotation of Candidates Names on the Ballot – When there is more than one candidate on the ballot from the same party, the ballot order shall be established under regulations adopted by the Secretary of State. The regulations shall include a protocol for rotation of the names.

SB 78 – Election Law – Hiring on a Nonpartisan Basis – Provides that election judges shall be hired on a non-partisan basis. The bill removes all requirements for a bi-partisan balance. Minors are permitted, but not in excess of one-third of adult judges.

SB 89 – Election Law – Certificate of Candidacy – Address Requirement – Provides that on the Certificate of Candidacy, the candidate must provide his or her domicile address as defined in the Transportation Article.

SB 90 – Election Law – Certificate of Candidacy – Given Name Requirement- Removes the ability of a candidate to use a nickname or other name that the candidate is generally known as on the Certificate of Candidacy.

HB 16 – Election Law – Absentee Ballot Applications and Voter Registration – Deadlines – Changes deadline to register to vote from 21 to 26 days before the election and changes the deadline to submit an absentee ballot application from 7 days to 15 days before the election.

HB 18 – Election Law – Voting Systems – Voter-Verified Paper Records – Requires an optical scan voting system and certain audits. In response to a question posed by Mr. Jezic, Mr. Goldstein explained that HB18 is an amended version of HB244 from the 2006 session.

HB 116 – Election Law – Reporting of Slate Expenditures – Campaign reports of slates must provide information on which candidate an expenditure benefited.

ASSISTANT ATTORNEY GENERAL'S REPORT

Assistant Attorney General Davis opened by noting that the lawsuit filed by Barbara Samorajczyk and Joan Cadden, candidates for House of Delegates in District 30 and 31, respectively, was dropped based on two things: 1) the exclusive remedy available to them was an administrative, not judicial, remedy, and 2) because of data available in reports provided to the candidates from MDVOTERS.

Mr. Davis discussed the fact that SB 77 relates the issues in the case *Schaeffer v. Lamone*. Mr. Schaeffer has retained counsel on the pretense that the alpha placement of names on the ballot

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denies equal protection to candidates. The remedy Schaeffer is seeking is that pondered in SB 77 – the random placement of names on the ballot.

In the Schade case, SBE staff has spent one hundred hours searching for documents. Schade has designated their expert witness and the State Board must name witnesses by February 28. Mr. Burger questioned if the 100 hours has already been spent, how much more information could possibly be provided. Mr. Davis acknowledged that Judge Manck has denied most of Schade's motions except to require SBE to produce electronic documents searching for no more than 100 hours collectively.

SUMMARY OF THE JOINT REPORT ON ELECTION DAY VOTER REGISTRATION

Mr. Davis provided an update on the Joint Report of the Office of the Attorney General and the State Administrator on Election Day registration required by the uncodified section of HB38 (2006). The findings were summarized as follows:

1. Implementing same day registration would produce 1-3% higher turnout.
2. Implementing same day registration would require amendments to the State's constitution.
3. If the deadline for voter registration applications is moved closer than 21 days to Election Day the LBEs feel that it would be impossible to manage.
4. Others states have found that same day registration shifts the load of registrants; approximately 15% of those that would have registered during the normal registration period would wait to register on Election Day. This obviously increases the burden on poll workers.

Ms. Mack asked if same day registration would delay the time needed to declare a winner, to which Mr. Davis responded that it would not only create a delay but it increases voter fraud unless there is the real time ability to communicate between e-poll books. Mr. Burger asked if the report assumed longer lines on Election Day would result and commented that it seemed to be a tradeoff between higher turnout and increased issues on Election Day. Mr. Jezic asked Mr. Davis to clarify if the 15% statistic was during a Presidential election. Mr. Davis explained that the 15% was a subset of the 1-3% gross increase in turnout.

WAIVER OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis recommended the Board grant 10 waiver requests. Mr DeMarinis stated to the Board the reasons for the recommendation. Of the 10 committees, Five were first time filers, two claimed financial hardship, one was due to a medical emergency, and one was late due to confusion about filing a final report. Finally, the last waiver request, the Committee to Election Stanley Charles Mazaleski in Frederick County was based on the Frederick County Board unanimously requested that the waiver be granted due to the committee never receiving pre-report notices.. Mr. Jezic asked what office Mr. Mazaleski sought; Mr. DeMarinis responded that it was for Calvert County Treasurer. Ms. Beck made a motion to grant the waivers. Ms. Mack seconded the motion. The motion passed unanimously.

Lastly, Mr. DeMarinis presented to the Board a motion for reconsideration by the Maryland Architects PAC. Mr. DeMarinis explained the background for the request and denial. Mr. DeMarinis recommended the Board reject the waiver request. Mr. Burger asked whether they had other past errors to consider. Mr. DeMarinis responded no. Mr. Burger noted that the

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Treasurer said he would be willing to attend the Board meeting when his appeal was heard. Mr DeMarinis explained that the PAC was established in 1994 and the current Treasurer has served for three years with no prior requests. Mr. DeMarinis confirmed to Mr. Burger that the Treasurer was not informed this request would be heard at this meeting, and is therefore not in attendance. Ms. Mack made a motion to waive the late fee for Maryland Architects PAC. Mr. Burger seconded the motion and the Board voted 3 out of 4 in favor with Mr. Jezic opposing. Since the Board now officially consists of a total of 4 members, Mr. Davis explained that three members constitutes a quorum and that he will provide the Chairman this information in writing.

Ms. Beck made a motion to approve the remaining nine requests and Ms. Mack seconded the motion. The Board unanimously approved the nine waiver requests.

APPROVAL OF FORM – STATEMENT OF ORGANIZATION

Mr. DeMarinis presented the Board with a new version of the Statement of Organization that was necessary due to the legislative changes effective January 1, 2007. The new version eliminates all references to Personal Treasurer accounts and local and state distinctions and adds a section for election designation. Additionally, the form adds important notices regarding the responsibilities of being a treasurer and chairman.

Ms. Mack inquired why the new form eliminated the candidate's signature. Mr. DeMarinis explained the candidate signature is only required for a candidate committee. Mr. Burger asked why the state and local check-offs from the first page were removed. Mr. DeMarinis responded that Maryland doesn't require a campaign finance entity be election-specific—a local candidate may use his or her campaign finance entity to run for State office and vice versa.

Ms. Beck stated that she liked the inclusion of the important notices and believed all of them should be in bold font, to which Mr. Burger inquired why only certain important notices were in bold. Mr. DeMarinis answered he can easily change the bolding and would bold all of the important notices. In response to a question from Mr. Burger, Mr. DeMarinis explained that in section 3, Election Designation, a candidate for House of Delegates would only be participating in the Gubernatorial election. This means the committee would file Annual Reports for non-gubernatorial election years only and during a Gubernatorial year, file all of the election-related reports. Mr. DeMarinis explained further that the threshold requirements for participating in election not designated. Ms. Beck made a motion to approve the form with the changes discussed; Mr. Jezic seconded. The motion passed unanimously.

OLD BUSINESS

Ms. Beck brought up the motion she made at the November meeting that was seconded and tabled. She restated her motion as follows:

There are many Maryland citizens – from across the political spectrum, who believe that their votes may not have been recorded or may have been recorded incorrectly. We must alter this perception by making a voter verified paper trail available. Since the House of Delegates is currently addressing this issue, I believe that the State Board of Elections should make it a policy to explore, examine and determine, if a reliable voter verified paper

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trail capability exists with our current Touch Screen machines or if not, what direction we should pursue to achieve this goal.

Mr. Burger seconded this motion and asked for discussion. Ms. Mack concurred that in the interest of improving elections research should be done, but should not be rushed into. Ms. Beck responded that research was her goal and reread the statement. Ms. Mack responded that paper will not be a cure-all and that she would like to look at all of the available technology.

At this time Mr. Davis reminded the Board that the Attorney General's office and SBE have spent hundreds of hours defending the current system in litigation, and that any actions of the board could have an impact on the case. Mr. Burger responded that he understood the warning but refused to put off the motion again because he feels the public interest outweighs the legal interest.

Mr. Jezic stated that it seemed to be a sensible proposal on its face but that he feels uncomfortable casting a vote and prejudging what the representatives of the people will do, for two reasons. The first reason is that a more thorough debate will take place in the legislative committee format and will have the benefit of a historical record. The second reason is the attorneys fees; he does not want to be part of a sanction against the State before the legislature steps in and says that they do not care about attorneys' fees. Mr. Jezic stated he is more comfortable hearing a similar motion after the legislature has discussed the issue and asked Mr. Burger to defer the vote. Mr. Burger responded that Mr. Jezic was successful in deferring the vote at the November meeting and that this is an issue that the Board should not pass up since the debate is central to the work of the committee. Mr. Burger wants to send a message that the Board agrees with the legislature and cited the NIST report on making a voter verifiable paper trail part of future elections. Mr. Burger stated that he is not willing to wait years.

Mr. Jezic responded that the Board's vote could prejudice attorneys' fees. Ms. Mack agreed that the Board should wait to hear the merits of the case and to examine new technology.

Mr. Burger called the vote; Ms. Beck and Mr. Burger voted in favor of the motion with Ms. Mack and Mr. Jezic opposing.

In other old business, Mr. Burger brought up mail received in December about a voter notification card. Ms. Wagner responded that she would look into the issue.

NEW BUSINESS

Mr. Burger questioned the effect of the fact that the Election Assistance Commission did not grant certification to Cyber and whether or not this affects Maryland's voting system software certification. Ms. Lamone explained that all companies must resubmit their software for certification and Diebold was the first to do that in November. Mr. Burger stated that because Cyber, the company that certified the Diebold software, is no longer a certified company, it calls the Diebold software into question. Ms. Lamone speculated that members of TrueVote would think that, but Cyber was accredited under the prior system when the Diebold software was approved and therefore it does not call into question Maryland's voting system. Mr. Burger

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responded that he was not just asking questions asked by TrueVote and was offended by Ms. Lamone's speculation.

Mr. Burger went on to inquire about the e-poll book certification, which was also certified by Cyber. Mr. Goldstein explained that, while the e-poll book software was certified by Ciber, it was while Ciber was accredited under the prior certification system. Mr. Burger asked exactly when that was and Mr. Goldstein stated it was June 2006 or earlier.

Mr. Burger, in another response to Ms. Lamone's speculation that TrueVote was the source of his questions, state that as Board chairman he represents anyone in Maryland, regardless of whether or not they support SBE. Accordingly, he will speak with anyone in a professional manner. Mr. Burger expressed his disappointment that Ms. Lamone would question his integrity and stated that he would not forget Ms. Lamone's speculation that he was acting as a representative of TrueVote at a Board meeting. Ms. Mack added that no group is distasteful but that we can't humor all groups' questions or the Board meetings would last too long. She concluded that some groups have better lobbyists than others.

SCHEDULING OF FEBRUARY MEETING

The next meeting of the State Board will be held on Tuesday February 27th 2007, at 1:30 p.m.

ADJOURNMENT

The meeting adjourned at 3:07 p.m.