

December 15, 2003  
151 West Street, Suite 200, Annapolis, Maryland 21401

Attendees: Gilles Burger, Chairman  
Joan Beck, Member  
Mark Wittstadt, Member  
Susan Widerman, Member  
Linda Lamone, Administrator  
Tim Augustine, Deputy Administrator  
Ross Goldstein, Director, Candidacy and Campaign Finance  
John Clark, Project Manager, Voter Registration System  
Joe Torre, Voting Systems and Procurement  
Jan Hejl, Voter Registration Manager  
Donna Duncan, Director, Election Management Division  
Mary Cramer Wagner, Deputy Director, Election Management Division  
Joan Mobley, MARS Manager  
Ernestine Blake-Green, Personnel Officer  
Nikki Trella, HAVA Coordinator  
Beth Buck, Budget Analyst  
Judith Arnold, Assistant Attorney General

Also Present: Henry Marshall  
Guy Harriman, President, Howard County Board of Elections  
Stephen Hinz, Accenture  
Robin Downs, Election Director, Prince George's County Election Office

#### **NOVEMBER EXECUTIVE SESSION**

On a motion by Ms. Widerman, seconded by Ms. Beck, the State Board convened in executive session on November 20, 2003, from 3:30 p.m. until 4:35 p.m., in accordance with the Statement for Closing a Meeting attached to the November 20 minutes, to meet with members of the Howard County Election Board and representatives of the Office of the Attorney General to discuss pending litigation and a personnel matter.

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

After establishing the presence of a quorum, Chairman Burger called the December 15th meeting to order at 1:55 p.m.

Mr. Burger wished everyone and their families happy holidays on behalf of the Board.

#### **APPROVAL OF MINUTES OF MEETING OF OCTOBER 20, 2003**

Redrafted minutes of the October 20, 2003 meeting were presented to the Board for approval. Mr. Wittstadt expressed his appreciation to the staff for the revision of the minutes. Following review of the revised minutes, a motion was offered by Mr. Wittstadt, seconded by Ms. Widerman, to approve the minutes of the October 20, 2003 meeting as amended.

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### **APPROVAL OF MINUTES OF MEETING OF NOVEMBER 20, 2003**

In connection with the discussion of Board member compensation and expenses, Ms. Wideman suggested that, minimally, a budgeted amount of 5 board members times 12 board meetings at \$100 each, equals \$6,000, and she noted that this does not include mileage for anyone. This language is to be added to the November minutes.

Following review and discussion of the minutes, a motion was offered by Ms. Beck, seconded by Mr. Wittstadt, to adopt the minutes of the November 20, 2003 meeting as amended.

Mr. Burger thanked the staff for comprehensive minutes. Mr. Burger made a motion that the staff make a placeholder on the SBE website for the approved minutes of State Board meetings beginning July 1, 2003, so that the public has access to them. Mr. Wittstadt seconded the motion. Motion unanimous.

### **ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

### **ADMINISTRATOR'S UPDATE**

#### New Staff

Ms. Lamone introduced Paul Aumayr, the newest member of the SBE staff. Mr. Aumayr comes to us with technical skills, and he will be assisting Mr. Torre and Mr. Heller with implementation of the new voting system. The Board welcomed Mr. Aumayr.

#### County Visits

Ms. Lamone reported that Mr. Clark attended the Worcester County open house last week. Mr. Clark also visited Somerset and Wicomico Counties.

#### Voting System Implementation

The voting system implementation is moving along. During the week of December 1<sup>st</sup>, there were mock elections in Calvert, Cecil, Frederick and Harford Counties. This week there will be mock elections in Anne Arundel, Carroll, Charles, Queen Anne's, Washington and Worcester Counties. Ms. Trella has spoken with the county election directors, and the overall reaction to the mock elections is good. There were positive responses from voters. Ms. Lamone relayed the feelings that there is a lot to accomplish in a short amount of time. Diebold did a good job in training and supporting the election judges for the mock elections. These judges are now better prepared for election day. The lower Eastern Shore counties have had good coverage from regional TV stations. Several boards commented that the judges performed better than expected.

Ms. Lamone stated that any of the Board members who would like to attend a mock election this week may visit Baltimore County, Caroline, Garrett or St. Mary's County. A mock election will be held in Somerset County during the week of January 5<sup>th</sup> and in Talbot County during the week of January 12<sup>th</sup>.

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#### Implementation Committee Meeting

Ms. Lamone reported that the Phase II Voting System Implementation Committee met today. The committee discussed provisional ballots and security. Ms. Downs added that several election directors attended a NIST symposium where ideas and concerns from attendees were shared, and that those in attendance feel that some of the ideas need to be put into practice in Maryland. One specific area of discussion related to making sure that election judges of opposite parties bring back supplies to the election office.

#### HAVA Implementation Plan

The Board members were provided an update on the HAVA implementation plan. Also, they were given a summary of funding by Congress. Ms. Lamone pointed out that Maryland may receive more funding than is outlined in the State Plan. In response to a question from Mr. Burger, Ms. Trella explained that when the State Plan was developed, Congress had only appropriated \$500 million, which was less than what was authorized. Since then, Congress has fully funded 2004 and added additional finding for 2003.

Ms. Lamone advised that the members of the new Elections Assistance Commission have been confirmed and will be sworn in this week. Also, NASED board members have scheduled a meeting with the Commission members in early January.

Ms. Lamone mentioned that a HAVA waiver was submitted for the Voter Registration System. Mr. Wittstadt asked how long a waiver had been requested. Ms. Lamone and Ms. Arnold explained that HAVA provides for an automatic waiver until January 1, 2006, of §303(a) requirements if a certification is submitted. There is no authority for Federal authorities to deny the waiver. Ms. Lamone advised that a waiver certification was submitted to the FEC, which postpones implementation of a statewide voter registration system until 2006.

Mr. Wittstadt asked Ms. Lamone if SBE is on target to meet HAVA requirements. Ms. Lamone responded in the affirmative and advised that the next major projects are the statewide voter registration list, computerized list maintenance and verification of voter registration information. Ms. Lamone added that we intend to begin this next major IT project after the roll out of the voting system. The RFP for the statewide voter registration system will probably go out in late winter or early spring.

Ms. Lamone advised the Board that Ms. Trella is in the process of hiring three staff members to work with her on HAVA implementation. Ms. Trella has conducted interviews and is focusing first on hiring a communications director to begin work in January. Mr. Wittstadt asked if Ms. Trella needs to get a hiring freeze waiver. Ms. Lamone responded that the hiring freeze waivers have been granted.

#### Budget Discussion

Ms. Buck directed the Board's attention to a spreadsheet regarding the SBE budget request for fiscal year 2005. The spreadsheet indicates budget requests by budget object and where the Department of Budget and Management (DBM) has cut those requests. In response to a question from Mr. Burger, Ms. Buck responded that the budget request

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was submitted on August 31<sup>st</sup> and that we have been negotiating with DBM since then on cuts.

#### Budget Discussion (Continued)

Ms. Lamone indicated that the SBE budget is now much more complicated because of federal funds and the voting system implementation. Ms. Buck explained that DBM cut everything except what is specifically needed for the voting systems. Ms. Lamone noted that SBE received a commitment from DBM that federal HAVA funds may be accessed if necessary. Following review and discussion of the spreadsheet, Mr. Burger asked Ms. Beck if the budget report has the level of detail that she is seeking. Ms. Beck responded that she thinks it does.

Mr. Wittstadt asked if the budget item for travel and motor vehicle expenses covers travel by Board members. Ms. Buck explained that it does, and that per diem for Board members is covered by the budget item for technical and special fees.

#### LaRouche Petitions

Ms. Lamone reported that a second group of petitions has been filed with this office on behalf of Democratic presidential candidate Lyndon LaRouche. The petition sheets have been sent to the local boards for verification of signatures.

#### Polling Place Changes

The deadline for local boards to change polling places for the upcoming elections was December 2<sup>nd</sup>. SBE staff is in the process of updating the polling place database at SBE as a result of those changes. The polling place database is used to prepare and certify the ballots and is posted on the SBE website.

#### Campaign Finance

The Campaign Finance Division is preparing for the next wave of campaign fund reports that are due January 21, 2004. Mr. Goldstein held a seminar at the SBE office on December 9<sup>th</sup>.

#### Late Fee Issue

Mr. Goldstein reported that Delegate Sossi requested a report from the Campaign Finance Division regarding the amount of all outstanding late fees. Mr. Goldstein presented a copy of his response and a chart detailing the outstanding late fees. One reason that the amount of the outstanding fees is so large is that the Division never removes a late fee for historical purposes, even though a lot of late fees are uncollectible. The statute of limitations for criminally collecting late fees is two years, and if the matter is not resolved within that time period then the State Prosecutor's Office cannot go forward criminally. The State Prosecutor might also determine that prosecution is not worthwhile, which is within his discretion. The late fees included on the chart date back to the late 1990s. Another reason the late fees are so large is that a good number of the accounts are maintained with the local boards. Any local candidate who has a noncontinuing campaign account files reports with the local board of elections only. It is up to the local board to let SBE know if a late fee has been assessed. Mr. Goldstein added that SBE needs to follow up with the local boards to make sure that they have

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been properly entering late fee information. Delegate Sossi is generally interested in finding ways to help SBE collect outstanding late fees. Mr. Goldstein explained that a few years ago the State Board proposed, as departmental legislation, that any candidate whose authorized campaign committee has late fees outstanding not be allowed to file for office until the committee pays the late fee.

#### Late Fee Issue (Continued)

Delegate Sossi suggested that, if a chairman or treasurer owes money to the State, any license that the person might be applying for from the State could not be issued until those late fees are paid.

Mr. Wittstadt asked whom the State Prosecutor is prosecuting for late fees. Ms. Arnold responded that the law says that the chairman and treasurer are responsible for paying the late fees. Mr. Wittstadt then asked if there is personal civil liability for the campaign treasurer and chairman. Ms. Arnold responded that there also may be civil liability. Mr. Goldstein explained that the Election Code provides for a civil penalty, which is an option for the State Prosecutor. Mr. Wittstadt asked if the staff has thought about referring these late fees to a central collection agency for the State or to private attorneys for collection. Following lengthy discussion and suggestions on how to resolve the outstanding late fee issue, Mr. Goldstein advised that he will make some calls before the next meeting to determine if Delegate Sossi is interested in suggesting legislative changes.

Ms. Beck asked whether, a campaign organization fails to pay debts and goes out of business, the debt is carried on our books and collected if the candidate wants to establish a new committee. Mr. Goldstein responded that individuals who are jointly and severally liable for reports or late fees, but not necessarily candidates, must satisfy overages if they want to form a new committee.

Mr. Goldstein advised the Board that he has suggested to Delegate Sossi the possibility of requiring all committees to file with the State instead of the local boards. The local boards do not have the time and resources to dedicate to campaign finance filing. Requiring State level filing would provide equal electronic disclosure of all campaign funds. Mr. Burger asked if SBE could handle the extra workload. Mr. Goldstein responded that his staff could handle this. The board members asked that Mr. Goldstein keep them updated on what Delegate Sossi wants to do.

#### Change of Party Affiliation Deadline

Ms. Lamone advised the Board that the deadline to change party affiliation was December 8<sup>th</sup>. The SBE office was open until 9 p.m. The office had 2 customers and received calls from four counties.

#### PowerProfile Upgrades

Ms. Lamone advised that the PowerProfile upgrades have been installed and have been tested in Anne Arundel and Howard Counties. Training on the upgrades will be held on January 6<sup>th</sup> and 7<sup>th</sup>. The next interim upgrade will be out this week and will be tested by Ms. Davis in Allegany County.

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#### SAIC Report

BSC is now working with the SBE staff to finalize the risk assessment for the new voting system.

#### Military and Overseas Voters

Mr. Augustine and Ms. Duncan attended a Federal Voting Assistance Program (FVAP) workshop at Fort Meade. The workshop was for voting assistance program officers assigned to each military organization unit. The Federal Voting Assistance Program office asked for state or local representatives to share their views about the absentee ballot process for military and overseas citizens.

#### Military and Overseas Voters (Continued)

The SBE representatives were able to share experiences from the last few elections: some of the county election boards have had difficulty receiving absentee ballots or getting them to military services members, because of problems with the military addressing system.

Mr. Augustine and Ms. Duncan were also able to make federal officials better understand the time limitations that we have in preparing and sending absentee ballots. Timing is especially tight for the upcoming presidential primary election. The Democratic Delegate Selection Plan requires candidates for President and Delegates to file for office in the year of the election. Accordingly, Maryland's normal candidate filing deadline of 70 days before an election is cut extremely short. While we have shortened other associated deadlines, the FVAP suggested that a 45-day ballot turnaround timeframe is impossible to meet. The deadline to certify the ballots is January 20<sup>th</sup>, just 42 days before the primary election. After that date, local election boards are required to proof the ballots and post them for public inspection for three days before authorizing them to be printed. Mr. Wittstadt asked the number of days it will take to get the ballots to the service men and women. Ms. Duncan responded that it will depend on the ballot printers and surmised that it would take a maximum of 20 days. She added that Maryland provides an extended period of time for receipt of the voted ballot after the election. Ms. Duncan assured the Board that every priority is given to the military and overseas absentee ballots by the local election boards.

#### NIST Conference

Ms. Lamone and Ms. Woodside attended a workshop last week at NIST. Ms. Downs was on the agenda and did a terrific job. She was the only local election official who participated. There were various topics that were hotly debated. Ms. Lamone distributed a program guide that listed all the speakers at the workshop.

#### Briefing – Ways and Means Committee

Ms. Lamone briefed the Ways and Means Committee last week; the briefing went very well.

#### IT Projects Update

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Ms. Lamone advised the Board members that an IT Projects Update report is in their folders. Under the HAVA Support Contracts, Program Management Office section, Mr. Burger asked the purpose of an RFP. Mr. Augustine explained that an RFP is required for program management support.

At Ms. Woodside's request, Mr. Clark shared two items with the Board. The security action plan on the website has been updated. Also, an automatic virus protection program has been installed in the SBE offices and will be installed in the county offices beginning this week.

#### Montgomery County Letter

Ms. Lamone reported that a response to the Montgomery County letter has been sent. An electronic copy will be sent to the Board members.

#### Board Attendance

Mr. Burger advised that he received a letter from the Governor's Secretary of Appointments requesting an attendance roster for calendar year 2003. Ms. Lamone advised that staff routinely responds to this annual request. In response to a question from Mr. Wittstadt, Mr. Burger explained that every year the chairs of boards and commissions are asked to provide an attendance roster of Board members because the Governor is interested in knowing which Board members regularly attend meetings. The law states that, if a board member does not attend at least 50% of the meetings in a consecutive 12-month period, the member is considered to have resigned.

Mr. Wittstadt asked if Mr. Burger has gotten word on the status of the vacancy on the State Board. Mr. Burger responded that he has heard nothing.

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

Ms. Arnold directed the Board's attention to her written report. She advised that last week the Supreme Court issued an opinion in the Bipartisan Campaign Finance Reform Act case, which involved a challenge to the new federal law on campaign finance. Preliminary reports indicate that the restrictions in the Act were upheld. She added that we will probably be able to do more in terms of regulating soft money, which is money given to the parties outside of individual contribution limits.

Ms. Arnold has been busy on the remand of the *Maryland Green Party v. Maryland Board of Elections* litigation. Both sides have filed proposed orders and supporting memoranda with the circuit court as of December 1<sup>st</sup>. There is no ongoing dispute on the merits, since SBE has agreed to count names of inactive voters on petitions and not to enforce nominating petition requirements.

In the *Antonetti v. Howard County Board* litigation, a hearing on SBE's motion to dismiss is scheduled for January 9<sup>th</sup>. Ms. Arnold reported that she did follow up research on the ability of the local board to set the salary for a new employee. There is a State personnel policy that says you cannot bring in an employee at a salary higher than midpoint on the

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salary scale. However, in following up with the Assistant Attorney General for personnel, Ms. Arnold learned that this policy does not apply to an agency with independent authority to set salaries. Thus, SBE would not be bound by the policy and could establish its own policy in reference to hiring new election directors and where they could start on the salary schedule. She stated that the Board probably needs to revisit what rule it wants to adopt on a more comprehensive basis. Mr. Wittstadt suggested that this subject be discussed during a future executive session.

Ms. Arnold responded to questions relating to a mailing by the Anne Arundel County Republican Party asking Democrats if they wished to change their party affiliations. She feels that the person who may want to change party should return the forms directly to the local election board. Ms. Downs added that this type of mailing is common in a number of local jurisdictions.

**ASSISTANT ATTORNEY GENERAL'S REPORT (Continued)**

In response to a question raised by Mr. Burger, Ms. Arnold explained that the Election Law Article does not appear to prohibit members of the General Assembly from soliciting contributions during the legislative session, although it clearly forbids receiving or depositing a contribution, using a contribution of money that was not deposited before the session, and conducting or selling a ticket to a fund raising event.

Ms. Arnold has been reviewing the voter registration procedures manual and hopes to get it out early in the New Year.

**“VOTE WHERE YOU RESIDE” OUTREACH PROPOSAL**

Mr. Hood sent an outreach proposal to Mr. Torre, which Mr. Torre forwarded to Board members. Ms. Wideman stated that she was hoping that SBE could do a pilot program in a limited geographical area such as Montgomery County.

Mr. Hood explained that there will be a Voter Day on February 7<sup>th</sup> at 40 Giant grocery stores, from 8 a.m. to 4 p.m. Voting machines and voter registration will be set up in the stores. There will also be a radio campaign. Posters will be produced for the stores. As part of this effort, a brochure could be distributed to encourage voters to update their addresses with their election boards before election day. The brochure could also be distributed to employees and corporations that volunteer to participate. SBE would only pay the cost to have the document printed. It would cost \$15,000 to print black and white messages. The Board asked Ms. Lamone if the funds are available. She responded that SBE could probably find the funds, but she questioned the effectiveness of this kind of brochure.

Mr. Burger asked Mr. Hood his opinion on the effectiveness of the proposal. Mr. Hood responded that the literature is not necessarily a waste, but most of the printed literature is going to be thrown away.

Ms. Lamone asked if there is a lot of voter outreach planned for after the primary election. Mr. Hood responded that 70% of the outreach is planned after the primary. Ms. Lamone suggested that instead of rushing to get material ready before the primary, it would be better to develop the handout for voter outreach events occurring before the general election.

Following a lengthy discussion on the outreach proposal, Ms. Lamone stated that she will work with Mr. Hood to get something ready for the Giant Voter Day and work on devising a more long-range plan. Mr. Hood added that Diebold would like to add a link to the voter registration application from the Maryland Votes website.

### **REQUEST FOR WAIVER OF LATE FEES**

Ms. Widerman made a motion, seconded by Ms. Beck, that the Board accept the Administrator's recommendation on all waiver requests that were presented to the Board for consideration. The motion was unanimously approved. Mr. Burger abstained from participation in this vote.

### **BALTIMORE CITY, ESTIMATE TO UPGRADE AVC ADVANTAGE VOTING MACHINES**

Ms. Buck submitted a spreadsheet showing the estimated cost to implement the statewide voting system in Baltimore City. Following a brief discussion, on a motion by Mr. Wittstadt, seconded by Ms. Beck, the Board deferred discussion on the upgrade of the AVC Advantage voting machines until the January meeting of the State Board.

### **REQUESTS FOR CONFIDENTIALITY OF CANDIDATE RESIDENCE ADDRESSES**

Two elected officials have requested that information in voter registration records and candidacy records relating to their residence addresses and telephone numbers be designated as confidential and precluded from disclosure under State Government Article, Title 10, Subtitle 6, Part III of the Annotated Code of Maryland. Following discussion, Ms. Beck made a motion, seconded by Ms. Widerman, that the requests of both elected officials be granted. Motion unanimous.

### **POLICY ESTABLISHING CANDIDATE FILING BEGINNING DATE**

Mr. Goldstein asked that the Board establish as policy a reasonable candidate filing beginning date. Currently, with the exception of the Democratic presidential candidates and delegates, candidates are able to file for office at any time. Early filing is often administratively problematic, because contest tables may not be set and forms may not have been created. Mr. Goldstein recommended a timeline for candidate filings: 12 months before a gubernatorial election filing deadline; 6 months before the presidential election filing deadline. Mr. Goldstein noted that the recommended method would provide sufficient time for candidates to file and provide the staff with the ability to plan for a well defined filing period. Ms. Beck offered a motion, second by Ms. Widerman, that the Board adopt the recommendations of Mr. Goldstein. Motion unanimous.

### **OLD BUSINESS**

Ms. Widerman asked if the Board had responded to the Sun editorial, and what steps had been taken to give information to the press directly from the Board instead of haphazardly.

Mr. Burger responded that there has not yet been a response to the Sun editorial. He has drafted a short response letter to the editor, with the assistance of Ms. Trella, and a longer opinion piece. He is not satisfied with the tone of the longer opinion piece and is

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working on this. Mr. Burger added that he and Ms. Lamone have scheduled 5 meetings with leaders of the General Assembly and DBM. The first session is scheduled for today at 4:30 p.m. with DBM Secretary DiPaula.

### **OLD BUSINESS (Continued)**

Ms. Widerman asked if SBE has someone in the media who could be updated periodically on a proactive basis. She feels that we could set up some way to call the media before they call us.

Mr. Wittstadt suggested producing a press release on a monthly basis to advise of events occurring at the State Board and of recent accomplishments.

Mr. Burger suggested a three-pronged approach. One was a response to the Baltimore Sun editorial. The second was a discussion with legislative and executive branch leaders to address any concerns that they might have and to let them know there is a face to what they have been reading about in the paper. Third, there should be an event for the press: an open house or possibly a demonstration. Mr. Burger asked for suggestions from the staff on how to accomplish this. He added that Ms. Woodside suggested the third component and he thinks it is a good idea.

Ms. Lamone suggested that the minutes of the State Board meetings could be added to the website, and we could notify the State House press that they are there.

Ms. Beck asked Ms. Lamone to share a news article with Mr. Burger. Ms. Lamone added that the Maryland organization supporting a voter-verified paper trail has never admitted in any of its discussions with the press that SBE had a very productive meeting with its representatives. Mr. Wittstadt asked what is done with the paper trail when the election is over. Ms. Lamone advised that by law the paper must be stored for 22 months following an election.

### **NEW BUSINESS**

Ms. Beck attended an open house in Anne Arundel County at their new board offices on December 3<sup>rd</sup>. Ms. Widerman, Mr. Burger and Ms. Lamone attended an open house in Wicomico County at the new board offices on December 3<sup>rd</sup>. Ms. Widerman spoke with the president of the Wicomico County board, who voiced a concern about illegal immigrants filling out VRA cards. He asked that the State Board consider requesting place of birth on the registration forms. Ms. Arnold advised that under the NVRA election officials are prohibited from collecting any information that is not necessary to process a person's voter registration and that it is her opinion that place of birth is not necessary.

### **SCHEDULING OF JANUARY MEETING**

The next meeting of the State Board will be held on January 28, 2003 at 1:30 p.m.

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**ADJOURNMENT**

The meeting adjourned at 4:30 p.m.