

MINUTES

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2 The State Board of Elections (SBE) meeting was held on Friday, April 23, 2010,
3 in the State Capitol in House Room 2. In attendance representing SBE were The
4 Honorable Jean Cunningham, Chair; Harold Pyon, Vice-Chair; Nancy Rodrigues,
5 Secretary; Martha Brissette, Policy Division; Matthew Abell, Elections Services
6 Division; Peter Goldin, Policy Division; Jim Hopper, Special Assignment Attorney for
7 the Attorney General.

8 Ms. Cunningham called the meeting to order at 10:12 AM.

9 The first order of business was the request by the City of Charlottesville to request
10 permission to upgrade their current voting equipment, which is the Hart System 6.1 to the
11 Hart System 6.2.1 version as part of the certification process.

12 Ms. Iachetta stated that in the past the City of Charlottesville has served as one of
13 the principle test areas used by vendors during the voting equipment certification process.
14 Voting equipment must be tested in an actual election prior to being certified in the
15 Commonwealth of Virginia. The Hart System 6.2.1 will be tested in the upcoming June
16 10, 2010 Primary.

17 Secretary Rodrigues moved to grant the City of Charlottesville permission to
18 upgrade their Hart System 6.1 to the Hart System version 6.2.1 as part of the certification
19 process. The motion was seconded and unanimously approved.

20 The next order of business was a request by the Montgomery County General
21 Registrar's Office for assistance in obtaining the resources needed to fund a vacant
22 Assistant Registrar position in their General Registrar's Office.

23 Ms. Cynthia S. Chappelka, Secretary, Montgomery County Electoral Board,
24 advised the board that according to the Code of Virginia local Electoral Boards determine
25 the number of Assistant Registrars are needed to meet the requirements placed upon them
26 by the public and the law. The number of registered voters in Montgomery County has
27 increased by 45% in the past ten years while the number of staff members in the
28 Montgomery County General Registrar's office has stayed the same. It has been
29 determined that an assistant registrar is needed in order to provide efficient and effective

30 elections as demanded by the public. The current two assistant registrars are eligible for
31 retirement. In 2011 an additional assistant is needed to handle the redistricting process
32 and the subsequent addition of new precincts that will need to be created. The
33 Montgomery County Board of Supervisors has finalized their 2011 budget and has
34 decided not to fund the requested Assistant General Registrar position. The General
35 Registrar and the Electoral Board are asking the board to assist them in any way possible
36 to convince the Montgomery County Board of Supervisors that this funding is needed
37 and this position needs to be filled.

38 Vice Chairman Pyon stated that the board does not have the authority to pressure
39 the Montgomery County Board of Supervisors to fund the additional assistant registrar
40 position.

41 Secretary Rodrigues stated that the General Assembly will only allow a 75%
42 reimbursement of locality expenses for salaries going forward. The concern about
43 smaller budgets and increased workloads in the field are being voiced throughout the
44 Commonwealth.

45 Ms. Cunningham stated that board sympathizes with the general registrar and the
46 electoral board members with regards to their need for an additional assistant registrar
47 and will do what they can; bearing in mind they have no authority over the Montgomery
48 County Board of Supervisors regarding this matter.

49 The next order of business was a request for clarification of SBE Policy 2008-
50 006, "Substantial Compliance – Statement of Voter and a Policy on Rules of Conduct for
51 the Central Absentee Precinct [CAP] in Fairfax County.

52 Mr. Edgardo Cortes, General Registrar for Fairfax County, expressed his concerns
53 about the lack of guidance regarding the procedures to be followed at Central Absentee
54 Precincts. Mr. Cortes asked that the board instruct staff to prepare guidance for localities
55 to be discussed at a future meeting. He stated that [1] SBE needed to provide
56 clarification or additional guidance regarding SBE Policy 2008-006 – "Substantial
57 Compliance as it applies to the Statement of Voter." The existing SBE policy creates
58 ambiguous areas that have led to serious questions regarding the proper administration of
59 the Central Absentee Precinct [CAP]. Mr. Cortes added that [2] "Rules of Conduct" for
60 observers and authorized party and campaign representatives in the CAP. Currently there

61 are no standards for such individuals beyond those set by §24.2-604 of the *Code of*
62 *Virginia*. Due to the differences in the operations of a standard polling place and the
63 operation of a CAP additional guidance is needed to keep the activities at the CAP
64 uniformed throughout the Commonwealth.

65 Secretary Rodrigues stated this issue would be researched by staff and comments
66 from the localities would be requested by staff prior to creating any policies.

67 Vice-Chairman Pyon stated the localities cannot make up their own rules for their
68 CAP offices, there needs to be uniformity.

69 Ms. Cunningham stated that SBE staff will address the issue and work with the
70 localities to create the necessary policy regarding Central Absentee Precincts.

71 The next order of business was the approval of the March 3, 2010 minutes. Ms.
72 Cunningham asked for a motion to approve the minutes.

73 Secretary Rodrigues moved to approve the March 3, 2010 minutes. The motion
74 was seconded and unanimously approved.

75 The next order of business was the re-certification of the November 3, 2009
76 election results due to an error found in Dinwiddie County. Mr. Abell advised the board
77 that a new VERIS report was developed to analyze voter turnout (Maximum Votes Cast
78 Versus Reported Turnout Errors). The report indentified voter turnout anomalies in
79 several localities. Dinwiddie County's anomaly occurred in 102 White Oak Precinct.
80 The total votes cast for Governor (168) was far lower than the voter turnout reported
81 (301). The General Registrar, Linda Brandon, researched the situation and found that
82 only one of the two DRE voting machine tapes was reported on the Statement of Results.

83 The General Registrar submitted form SBE-659 (Request To Inspect Sealed
84 Election Materials) and contacted a majority of White Oak's Officers of Election who
85 served on 11/3/2009. The Officers arrived at the Dinwiddie County Clerk of Court's
86 office on Wednesday, April 7, 2010, and completed their review and revision to both sets
87 of Statements of Results. The Dinwiddie Electoral Board met on Friday, April 9, 2010 to
88 re-certify their results and issue amended Abstracts for Governor, Lieutenant Governor,
89 Attorney General and House of Delegates, District 63.

90 Mr. John C. Stewart, Secretary Dinwiddie Electoral Board, stated this was the
91 first time something like this had ever happened and wanted the board to know that every
92 effort would be made in the future to make sure this would never happen again.

93 Secretary Rodrigues thanked the Dinwiddie Electoral Board and SBE staff for the
94 amount of work it took to make the necessary corrections.

95 Mr. Abell advised the board that the new reporting method would be used
96 regularly in the future to verify voter turnout. He is working on incorporating new
97 procedures for utilization of this new report into the existing Election Results Step-by-
98 Step document. There may also be an opportunity for training in this subject area this
99 summer.

100 Vice-Chairman Pyon stated it is important for staff to continue to look for ways to
101 improve agency processes to protect the integrity of the vote.

102 The next order of business was the drawing for the Special Elections on June 15,
103 2010 to fill two seats in the House of Delegates. Vice Chairman Pyon drew the first
104 position and the results were as follows:

- 105 1. Democratic Party
- 106 2. Republican Party

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108 The next order of business was a request to waive a civil penalty by the
109 Rockbridge Citizens Advisory Panel. Mr. Peter Goldin, advised the board that the
110 Rockbridge Citizens Advisory Panel requested a waiver of their late filing penalty for the
111 October 15, 2009 filing deadline stating it was late due to the death of their former
112 treasurer Mr. Tichenor. Staff recommends that the Board upholds its penalty. Ms.
113 Whittington has been filing reports since July 15, 2009 as was aware of the report due
114 dates.

115 Secretary Rodrigues moved to uphold the penalty of \$100.00. The motion was
116 seconded and unanimously approved.

117 The next order of business was a request to waive a civil penalty by the Friends of
118 Jeff Frederick. Mr. Goldin advised the board that the Friends of Jeff Frederick attempted
119 to make the Dec. 3, 2009 report a final report but did not submit the required Termination
120 Statement. They were informed that they needed to file a Final/Termination Statement

121 for Dec. 3, 2009. This had not been done as of April 9, 2010. Staff recommends that the
122 Board uphold its penalty.

123 Secretary Rodrigues moved to uphold the penalty of \$100.00. The motion was
124 seconded and unanimously approved.

125 The next order of business was a request to waive a civil penalty by the
126 Physicians & Surgeons Association of Virginia. Mr. Goldin advised the board that on
127 Dec. 07, 2009 an acknowledgement letter went out via email to the newly registered
128 PAC. They never received the email. Per Mr. Weber, he acknowledges that their
129 website manager never set up the email systems as per their request. And because it
130 wasn't set up it bounced back to the SBE and we did not catch it as an undeliverable
131 address. Staff recommends that the Board upholds its penalty.

132 Secretary Rodrigues moved to uphold the penalty of \$100.00. The motion was
133 seconded and unanimously approved.

134 The next order of business was a request to waive several civil penalties by the
135 National Association of Social Workers, Virginia Chapter. Mr. Goldin asked the board to
136 table this request to allow a representative of this PAC to address the board at a later date.

137 The board agreed to table this request for waivers.

138 The next order of business was a request to waive a civil penalty by the Friends of
139 Aaron Lyles. Mr. Lyles advised the board that he was given conflicting information by
140 the General Registrar and SBE staff. The General Registrar was asked for the
141 requirements for a PAC and gave information regarding the requirements of a PAC; staff
142 was asked for the requirements for a Candidate Committee and gave information
143 regarding the requirements for a Candidate Committee. Staff recommends that the
144 Board upholds its penalty because it is the responsibility of the candidate or Political
145 Action Committee treasurer to know what schedule they are to file on.

146 Secretary Rodrigues moved to uphold a penalty of \$25.00. The motion was
147 seconded and unanimously approved.

148 The next order of business was a request to waive a civil penalty by the Friends of
149 Vanessa B. Clemens. Mr. Mike Wade, GOP Chair advised the board that Ms. Clemens
150 ran as a write-in candidate, her campaign never really raised any funds. Mr. Michael
151 Brown, Ms. Clemens Treasurer left his office as Treasurer and took her financial books

152 with him. Requests have been made to retrieve them but to date they have not been
153 returned. Ms. Clemens was relying on the party to handle her campaign finance filings,
154 as they had promised to but failed to file for her.

155 Ms. Cunningham moved to reduce the penalty from \$1,000.00 to \$500.00. The
156 motion was seconded and unanimously approved.

157 The next order of business was a request to waive a civil penalty by the Prince
158 George Leadership PAC. Mr. Goldin advised the board that the envelope that contained
159 their April 15th report was not attached and the date mailed couldn't be verified and staff
160 recommended that the penalty be waived.

161 Secretary Rodrigues moved to uphold the staff recommendation and waive the
162 penalty of \$100.00. The motion was seconded and unanimously approved.

163 The next order of business was a request to administratively close the Sudley
164 Springs, Catharpin Sudley Mountain Stoney Ridge Civic Association PAC. Mr. Goldin
165 advised the board that the Treasurer of this PAC has been located and therefore, the board
166 could not close this PAC and asked to place this item on a future agenda.

167 The next order of business was a request for approval of a proposed State Board
168 of Elections Regulatory Process. Ms. Martha Brissette asked the board's permission to
169 publish the Regulatory Process Guidelines.

170 Secretary Rodrigues moved that this issue be tabled to allow the board additional
171 time to review the guidelines. The motion was seconded and unanimously approved.

172 The next order of business was a request that the board ratify the requests to
173 inspect sealed election materials, previously approved by Secretary Rodrigues, in the
174 County of Dinwiddie in precinct #102 – White Oak; to determine the number of
175 respective number of actual voters listed on two machines [#3866 and #3876]. A request
176 to inspect sealed election materials in the City of Suffolk in the Central Absentee Precinct
177 [CAP] to determine whether an individual requesting correction of that individual's own
178 personal voting record is entitled to have the record corrected under Virginia Code §2.2-
179 386 [A] [5] on the basis that the individual did not cast an absentee ballot at all in the
180 election.

181 Ms. Cunningham moved to ratify the Secretary's actions. The motion was
182 seconded and approved.

183 The next order of business was a request that the board grant permission to
184 expand its 9/8/2008 approval for use of the Unilect Patriot emergency paper ballot into
185 use as an absentee paper ballot. The expansion would allow localities who do not use
186 their Central Absentee Precinct in an election to use the Unilect Patriot paper ballot as
187 their absentee method of voting. Letters of similar request were presented to the board
188 from Donna Altizer, General Registrar in Giles, and Deborah Barrett, General Registrar
189 in Tazewell County. Mr. Abell advised the board that this would be a cost saving
190 measure for the localities by alleviating the need for them to pay for the printing of a
191 traditional paper ballot.

192 Vice-Chairman Pyon moved to expand the use of the Unilect Patriot emergency
193 paper ballot to be used as an absentee paper ballot. The motion was seconded and
194 unanimously approved.

195 Ms. Cunningham asked if there was anyone in attendance wishing to address the
196 board under “Public Comments.”

197 Mr. Arnold Nye of Gloucester County, representing the Gloucester Forty asked
198 the board to consider providing guidance and documents to assist citizens wishing to
199 petition for the removal of officers under the provisions of Virginia Code §24.2-235.
200 Mr. Nye stated he was unable to find an appropriate document to use when attempting to
201 petition to remove an officer, there was even confusion in the Clerk of Courts office as to
202 how much to charge to submit these petitions. Mr. Nye also stated that the guidance on
203 this matter needed to be clear and easily understandable by the citizens of the
204 Commonwealth.

205 Ms. Cunningham thanked Mr. Nye for bringing his concerns before the board and
206 at the suggestion of counsel agreed to asked staff to look into this matter.

207 Ms. Cunningham moved to convene an Executive Sessions to discuss litigation.
208 “I move to convene a closed meeting for the purpose of consultation with legal counsel
209 regarding actual litigation involving the State Board of Elections, where such
210 consultation or briefing in open meeting would adversely affect the negotiating of
211 litigating posture of the State Board of Elections. Consultation with legal counsel
212 retained by the Attorney general to provide legal representation to the State Board of
213 Elections regarding specific legal matters requires discussions in a closed meeting to

214 receive legal advice and recommendation. The applicable exemption of §2.2-3711 [A][7]
215 of the Code of Virginia. The board convened a closed meeting.

216 At the conclusion of the closed meeting, Vice-Chairman Pyon moved to
217 reconvene in open session. The board certified that to the best of the knowledge of each
218 individual member of the State Board of Elections only the following matters were
219 discussed:

- 220 1. Matters regarding consultation with legal counsel regarding actual litigation,
221 where such consultation in open meeting would adversely affect the negotiating
222 or litigating posture of the State Board of Elections; and consultation with legal
223 counsel retained by the Attorney General to provide legal representation to the
224 State Board of Elections regarding specific legal matters requires discussions in a
225 closed meeting to receive legal advice and recommendation, and
- 226 2. Only Public business matters lawfully exempted from open meeting requirements
227 under the provisions of the Virginia Freedom of Information Act.

228 Each member was asked to affirm acknowledgement of the certification and each
229 indicated that they individually affirmed acknowledgement of the certification.

230 Cunningham asked for any further comments. There being none asked for a
231 motion to adjourn.

232 Secretary Rodrigues moved to adjourn the meeting. The motion was seconded
233 and unanimously approve. The meeting was adjourned at 12:45 PM.

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Secretary

242 Chair

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Vice-Chairman