

Approved  
February 20, 2007

**Minutes of The New York State Board of Elections  
Tuesday, January 23, 2007**

The meeting of the Commissioners of the New York State Board of Elections was held at the Board's offices at 40 Steuben Street, Albany, New York in the 4<sup>th</sup> Floor Conference Room. The meeting was called to order at 12:10p.m. The meeting was chaired by Commissioner Douglas Kellner. Commissioners present were Evelyn Aquila and Helena Donohue. Commissioner Kelleher was absent. Staff present were Peter Kosinski, Stanley Zalen, Todd Valentine, Pat Murray, William McCann, Lee Daghlian, Bob Brehm, Deirdre Hammer, Anna Svizzero, Allison Carr, and George Stanton. The guest list is attached.

**Minutes of January 4, 2007**- approved as read.

At this time Commissioner Kellner recessed the regular meeting in order to commence a meeting of the Board of Canvassers to accept an amendment to the certification of vote results of the November 7, 2006 General Election. County boards have sent in amended figures for the election to correct errors that were made. The Board of Canvassers voted 3-0 to amend the certification. The meeting of the Board of Canvassers was adjourned and the regular meeting of the Board reconvened at that time.

**Unit Updates:**

- **Legal Unit:** - Todd Valentine reported that there has been a contract signed with Mr. Olsen, an attorney who will be representing us in the judicial convention case that is being appealed to the U. S. Supreme Court.  
Todd also reported that there is a meeting on Wednesday, January 24<sup>th</sup> with Department of Justice (DOJ) in Albany to discuss the certification process and the time line. On Thursday, January 25<sup>th</sup>, DOJ will meet with several counties, including New York City to discuss issues directly with them. That meeting will also be held in Albany and the Attorney General's representative will attend both meetings.
- **Election Operations:** Anna Svizzero reported that they have notified Ciber that testing is on hold in order to remedy some of the issues between Ciber and its accreditation with the Election Assistance Commission (EAC). Anna also stated that Ciber may go ahead with compliance and that Wiley Labs can continue whatever hardware testing they are doing.  
Secondly, Anna reports that she is still in discussion with the issue of vendor training for staff and how to put together a training program for county personnel as well as developing an instruction manual for those procedures.  
Thirdly, they continue to develop procedures for acceptance testing. There was a meeting in Schenectady which all vendors attended. They are working with county boards and NYSTEC to ensure that the proper acceptance testing procedures are put into place.  
Fourthly, the AIR study is being amended with additional information such as the

challenge reports from the county boards as to how many disabled people they had vote at their polling places. That information has been received from 38 counties and they continue to gather information from the rest. Those numbers would be added to the Plan B number of voters in order to make a determination as to how many voters should be able to use each voting machine. Commissioner Kellner stated that when we receive these numbers that we should provide them to the DOJ.

Anna Svizzero requested that the two Plan B vendors whose machines were not purchased by counties requested that their machines be returned to them. After a short discussion, the Commissioners voted 3-0 to approve that action.

- **NVRA/PIO:** Lee Daghlian reported that the posting of the minutes on the web site has basically been completed. There was some discussion about e-mailing county boards and other interested people that we are posting such documents. And also that we should post the proposed minutes with the intention of replacing them with the approved minutes. Lee stated that the posting could begin today. The Commissioners voted 3-0 to approve the posting of the minutes on our web site.

Lee also reported that he and Donna Mullahey will be visiting the hotel in Syracuse on January 24<sup>th</sup> to firm up the details concerning costs, menus, scheduling of the agenda and any special needs for the NYSBOE annual conference in May of 2007.

In response to a question from Commissioner Kellner, Lee reported that the NVRA program is being reviewed. There were recommendations being made by Deirdre Hammer. Lee's entire unit has not had an opportunity to sit down and work out these details, and once they do he will develop a report listing these recommendations, if necessary, at the next board meeting.

- **ITU:** George Stanton reported that his unit just completed the collection and posting of the January 15<sup>th</sup> Periodic campaign finance reports. Secondly, George stated that Saber has started the data migration for the 8 or 9 pilot counties. Two counties have been completed to date and expect to finish the rest quickly. Also, Saber has developed what they call a sandbox for the counties to use to help develop connectivity issues. George said that the hardware and software for the data center has been ordered and is expected to be received shortly. George also reported that the purchase orders for the air conditioning and power upgrades for the data center in this building have been approved by the Office of General Services (OGS). The installation is expected around mid-February. They are currently looking for different ways to do the installation. If the air conditioning is not up and running in time, there is the possibility of having the assembly of the hardware and software done in Ohio and then delivered here when the data center is ready. This may result in a lower cost rather than waiting for the data center to be completed. There was a recommendation from Commissioner Kellner that the steering committee should look at this issue and make a recommendation on which way to go. Commissioner Kellner stated that he is worried about the extra costs that this would create. Mr. Kosinski understood that there may be additional costs but that it was very important to get the job done so that we do not jeopardize the time line any further. Commissioner Kellner stated again that the steering committee should authorize up to \$250, 000 additional funds from a contingency

budget to finish this project. That was moved by Commissioner Kellner and the vote was 3-0 in favor of approval.

George Stanton indicated that the independent counties' interface development is coming along well with the exception of Delaware county. They are lagging behind for a couple reasons, one being that the technical person in Delaware is learning the new system as he does the installation; and second, there are personnel issues at that board of elections. The steering committee needs to address this issue to see if they can help them work through their technical problems.

There is an issue of payment of vendors for the counties. Per Commissioner Kellner, the vendors should be itemizing their time allotments for this issue and bill us accordingly since there are no contracts between us and the vendors. He also stated we should have a third party evaluate the hours and costs; and that perhaps NYSTEC should review it.

There is an order from Saber to do the VPN configuration at the back up site in Hawthorne, New York . This will require additional costs. It will cost about \$42,000 to do this and we have budgeted \$150, 000 for the project. This would save approximately \$100,000. The Commissioners voted 3-0 to have Mr. Stanton get the process started.

- **Campaign Finance:** Bill McCann reported that at the ECA meeting last week that he brought up the issue of the 8 counties that have not complied with our request as to who should be filing reports with them as well as us so that we can implement fully our compliance efforts. He still has not heard from them. He gave them until February 1<sup>st</sup>, 2007 to comply. Commissioner Kellner noted that he spoke of that very issue at the ECA meeting also and that the Board should consider issuing subpoenas to those counties if they do not comply. He also stated that we should name those counties in our minutes to get it on the record. He also said we should reinforce that this information is not optional. We have to have it, and if we don't get it by the next meeting, at Commissioner Aquila's request, that we subpoena them for it. The 8 counties are Columbia, Lewis, Niagara, Orleans, Rensselaer, Saratoga, Sullivan and Wyoming.

Mr. McCann also gave an update on the number of filers. He stated that with the January 15<sup>th</sup> periodic filing, there were approximately 1,500 out of 6,600 filers who did not file and that they will be receiving 5 day letters shortly.

Bill also stated that in 2007, he expects there will be 10,000 filers considering this year has many local elections. Therefore the costs associated with this, such as process servers, will increase exponentially. Bill also pointed out that there will be some strain on his clerical staff to get all this paperwork out during each filing. He reported that they have a meeting with NYSTEC to develop the internal controls for the HAVA Complaint procedure and should be able to provide that to the Board soon. Bill stated that he may need additional clerical help for the seriously increased load on his unit in the past couple of years.

- **Old Business:** Commissioner Kellner raised the issue concerning the confidentiality of the reports prepared by Ciber and NYSTEC concerning the testing of commercial off the shelf (COTS) software. Ciber labeled Version 3 of the report as "competition sensitive" and confidential. Version 3 was the final version of the report approved by both NYSTEC

and Ciber. Commissioner Kellner had requested that Ciber remove the confidential designation so the report could be made public. Ciber did not directly respond to Commissioner Kellner's request, but Ciber's attorney added additional language and deleted substantial text without consulting NYSTEC. This "Version 4" was released to the public. Commissioner Kellner still requested that Ciber withdraw its "confidential" designation of Version 3, which had been designated as "final," and requested that Ciber provide an explanation. On January 22, 2007, Ciber's attorney responded that there was no competitive sensitive information in Version 3. Commissioner Kellner moved to make Version 3 public. Commissioner Kellner thanked NYSTEC for their work on this. The Commissioners agreed by a 3-0 vote to make this version 3 public.

Ciber not being certified to do testing by the EAC was discussed next. Peter Kosinski said that the fact that we have asked Ciber and FOILED the EAC to send us the reports that address this issue have not been provided to us is troubling. We have no information as to when we will receive them and we have been told that they are still discussing it and are not sure when they can provide us with these documents. It was also noted that Senator Feinstein sent a letter to the EAC to request the same information and to find out why it was never made public. We spoke to the EAC today and they are deciding whether they have to release them. Per Todd Valentine, the EAC has 20 days to respond to our request. They can then take another ten days and if they still don't respond then there is a process to further delay which could take longer, as of yet we have no information, Commissioner Kellner said that Ciber should be subpoenaed and that he has already drafted a subpoena. He doesn't feel that Ciber deserves any more time to comply. We have a \$3 million contract and they are reluctant to give us answers which is holding up our testing process. Commissioner Donohue feels that we should give them two more weeks before we subpoena them. There was continued discussion. Peter Kosinski feels that we should elicit help from the two New York U.S. Senators to intercede on our behalf with the EAC. The issue of Ciber wanting to coordinate with the EAC about what they release and what they say is also troubling. Commissioner Kellner feels we should get them under oath to ensure that what they report to us is truthful and reliable. He feels that we as an Agency did a terrible job when we decided to hire Ciber to begin with. He said that some of these issues were known before we hired them. He feels that we should terminate the contract right now. Peter Kosinski stated that after we hired Ciber, that we hired NYSTEC to oversee their processes, and at the time Ciber was the leading testing authority for voting systems and we felt we had the premier company to do the job. He stated that we need the reports from the EAC to determine if there are defects in Ciber's testing, that we have reviewed all of Ciber's reports and we have asked that NYSTEC review them as well. Discussion continued and the bottom line was that we make no more payments to Ciber until they comply with our requests. Commissioner Aquila stated that she supported Commissioner Kellner's proposal to subpoena Ciber to obtain the requested documents. We will wait until the next Commissioner's meeting on February 7, 2007 to decide if we should take further action.

Lee Daghljan requested a vote by the Commissioners to accept the RFP for poll worker training and voter outreach to allow his committee to make any minor changes that they may have to make before final publication. The Board voted 3-0 to approve.

At this time Anna Svizzero supplied a new time line that included NYSTEC'S changes to reflect issues concerning Ciber.

- **New Business:** First, the 6210 regulations: Commissioner Kellner feels that the draft report is ready to be put out for public comment. Any tweaking left to be done can be done during that time or after the official comment time is over. He said it is ok to publish this draft and the Commissioners agreed 3-0 to publish the existing draft.  
Second, Pat Murray discussed regulations for the database. There have been minor changes and that we can skip the process of going to GOER. We can start the comment process of right away. The Commissioners voted 3-0 to approve.

The board adjourned to Executive Session at 2:15 p.m. to discuss investigation cases and personnel matters..

**The meeting was adjourned at 2:25p.m. The next board meeting is scheduled for February 7<sup>th</sup>, 2007 at Noon in Albany, New York.**