

**Minutes of The New York State Board of Elections
Wednesday, February 27, 2008**

The regular meeting of the State Board of Elections was called to order at 12:20 p.m. at the New York State Board of Elections, 40 Steuben Street, Albany, New York. The meeting was chaired by Commissioner Jim Walsh. Commissioners present were Douglas Kellner, Helena Donohue and Evelyn Aquila. Staff present were: Stanley Zalen, Todd Valentine, Bob Brehm, Anna Svizzero, Paul Collins, Elizabeth Hogan, William McCann, and Greg Fiozzo. Guest list is attached.

Unit Updates:

- **Executive Unit:** Todd Valentine gave a report.
- **Legal Unit:** - Paul Collins reported on various actions brought to State Court from voting system vendors: Liberty, ES&S, and Avante.
- **Election Operations:** Anna Svizzero reported on several issues:
 - The Special Election held on February 26th. There was some bad weather to contend with but other than that there seemed to be no problems with the voting machines or the polling places. There was a late change to the ballot ordered by the Court of Appeals, the decision arriving after 5 PM on Monday. Thus the voting machines, emergency ballots and affidavit ballots and canvassing materials required a change. Also, on Tuesday, an impoundment order was received for the Special Election.
 - The collection of data for the Presidential Primary is continuing. Most counties have responded. New York City results were certified last night. We should have the results available for posting soon.
 - The Office of General Services (OGS) notified the State Board that final approval has been given for all of the contracts for voting systems. The contracts are posted at the OGS website and notice was sent to the county boards.
 - We have received the reports from the independent testing authority (SysTest) for the interim certification of ballot marking devices and also from the Citizens Election Modernization Advisory Committee (CEMAC). These issues will be discussed during New Business.
- **NVRA/PIO:** Bob Brehm reported on several issues:
 - there are large number of voter registrations are continuing
 - The county funds program is continuing and is in good shape.
 - Meeting schedule with SOE Software for Friday, February 29th for informational purposes.
 - Greg Fiozzo gave a report on the issues of access that were given to us by NYSILC.
 - There was a discussion of the procedure to monitor the NYSVoter list of registered voters to be sure that it is functioning properly. A draft outline of the monitoring procedure was created and a meeting is planned next week between the Steering Committee and members of the Policy Standards Advisory Committee to continue working on that procedure.
- **Campaign Finance:** Elizabeth Hogan reported on several projects:
 - The RFP process for process servers is in the final draft.
 - Efforts are ongoing on the project to scan into a computer file certain campaign finance paper documents.
 - The State Board will meet this week with staff from the Governor's Office of Regulatory

Reform (GORR) to move forward on amendments to the Part 6200 Regulations concerning Filing Statements of Campaign Receipts and Expenditures.

- The schedule for the upcoming seminars this summer should be outsoon.
- The 2006 corporate overcontribution review process is in the mid stages and continues.
- The HAVA Complaint Procedure project is in its final stages.
- Work continues on the neutral operating system campaign finance software package.

• **Old Business :**

- The resolution on fees for testing of open source software. It was moved by Commissioner Donohue to accept the resolution. **A vote was taken and it was passed 4-0.**
- Proposed Amendment of Regulation Part 6204 having to do with Designating Independent Nominating Petitions. Commissioner Donohue moved that this be tabled. It was decided to hold this over to the next meeting so that the lawyers could do a review of the draft.

• **New Business :**

- Interim Certification of Ballot Marking Devices (BMDs) for use, only in 2008. There was a discussion on the Interim Certification of BMDs to implement the order of Judge Sharpe to have one BMD at every polling place for the September 2008 Primary Election. At a minimum, such devices meet the accessibility requirements set forth in 42 USC 15481. Copies of the respective SysTest reports and the CEMAC report are attached. Copies will be posted to the website.
 - Avante: There was a discussion that included a presentation of the test report findings by SysTest that in summary indicated that the Avante Vote Tracker EVC308 SPR-FF-BMD and the EVC308 SPR fail to meet the required acceptance criteria of the NYSBOE for the HAVA 2002 Section 301 A and B requirements and the 2005 VVSG Volume 1 Section 3 requirements. Also, the Board took into consideration when making their determination the CEMAC report which recommended that these Avante systems not be approved for use in 2008 as BMDs. A motion was made to not approve for use in 2008 and the State Board did not grant interim certification to the Avante Vote Tracker voting systems (copy of the resolution is attached). **The vote was 4-0 unanimous in favor of the motion.**
 - ES&S AutoMARK: There was a discussion that included a presentation of the test report findings by SysTest that in summary indicated that the ES&S AutoMARK successfully meets the required acceptance criteria of the NYSBOE for the HAVA 2002 Section 301 A and B requirements and the 2005 VVSG Volume 1 Section 3 requirements. Also, the Board took into consideration when making their determination the CEMAC report which recommended that the ES&S AutoMARK be approved for use in 2008 as BMDs. A motion was made to approve for use, only in 2008 and the State Board grant interim certification to the ES&S AutoMARK (copy of the resolution is attached). **The vote was 4-0 unanimous in favor of the motion.**
 - Liberty Election System: There was a discussion that included a presentation of the test report findings by SysTest that in summary indicated that the Liberty Voting System noting that Liberty only supports 2 languages: English and Spanish, and in its findings Liberty Election System successfully meets the required acceptance criteria of the NYSBOE for the HAVA 2002 Section 301 A and B requirements and the 2005 VVSG Volume 1 Section 3 requirements. Also, the Board took into consideration when making their determination the CEMAC report which recommended that the Liberty Voting System not be approved for use in 2008 as a BMD. There was further discussion about the independent verification process, its use and its position relative to the BMD. A motion was

made by Commissioner Aquila to approve for use, only in 2008 and the State Board grant interim certification to the Liberty Voting System (copy of the resolution is attached). **The vote was 3 in favor of the motion (Commissioners Walsh, Aquila and Donohue) and 1 opposed (Commissioner Kellner).**

- Premier AutoMARK: There was a discussion that included a presentation of the test report findings by SysTest that in summary indicated that the Premier AutoMARK successfully meets the required acceptance criteria of the NYSBOE for the HAVA 2002 Section 301 A and B requirements and the 2005 VVSG Volume 1 Section 3 requirements. Also, the Board took into consideration when making their determination the CEMAC report which recommended that the Premier AutoMARK be approved for use in 2008 a BMD. A motion was made to approve for use, only in 2008 and the State Board grant interim certification to the Premier AutoMARK (copy of the resolution is attached). **The vote was 4-0 unanimous in favor of the motion.**
- Sequoia Voting System – Imagecast Precinct Ballot Marker: There was a discussion that included a presentation of the test report findings by SysTest that in summary indicated that the Sequoia Voting System – Imagecast Precinct Ballot Marker successfully meets the required acceptance criteria of the NYSBOE for the HAVA 2002 Section 301 A and B requirements and the 2005 VVSG Volume 1 Section 3 requirements. Also, the Board took into consideration when making their determination the CEMAC report which recommended that the Sequoia Voting System – Imagecast Precinct Ballot Marker be approved for use in 2008 a BMD. A motion was made by Commissioner Kellner, seconded by Commissioner Walsh to approve for use, only in 2008 and the State Board grant interim certification to the Sequoia Voting System – Imagecast Precinct Ballot Marker (copy of the resolution is attached). **The vote was 4-0 unanimous in favor of the motion.**
- A motion was offered by Commissioner Donohue and seconded by Commissioner Aquila regarding acceptance testing funds that payment for this operation not to exceed \$312,000.00 to procure temporary staff to assist with acceptance testing. **This motion was 4-0, unanimous in favor of the motion.**
- There was discussion about the voter education plan for 2008 and also about the regular communications plan for the State Board.

Executive Session was deemed not to be required for preliminary determinations for cases and the votes were taken. **A vote was 4-0 to accept the recommendations on all cases except CMP06-53. Commissioner Kellner recused himself because of his relation with the parties. That vote was 3-0 to approve the recommendation.**

The next board meeting will be March 26th at noon in Albany.

The meeting was adjourned at 2:30p.m.