

Approved
March 27, 2007

Minutes of The New York State Board of Elections
Tuesday, March 13, 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 4th Floor Conference Room. The meeting was called to order at 12:05 p.m. In the absence of Neil Kelleher and Helena Donohue due to health reasons there was no quorum, therefore there was not an official meeting of the Commissioners. The meeting was chaired by Commissioner Douglas Kellner. Commissioner Evelyn Aquila was present. Commissioner Kellner announced that since this was not an official meeting no votes will be taken on any issues and that we would conduct an informational meeting covering unit updates and other timely issues. Staff present were Peter Kosinski, Stan Zalen, William McCann, Lee Daghlian, Bob Brehm, Deidre Hammer, Anna Svizzero, Tarry Breads, Todd Valentine, Allison Carr, Pat Tracey and George Stanton. The guest list is attached.

Unit Updates:

- **Legal Unit:** - Todd Valentine reported that they are in contact with DOJ concerning HAVA issues. There are no updates as of yet.
The *Lopez-Torres* case will be heard by the U.S. Supreme Court in October. The trial court judge issued a stay of his order, therefore the process of electing State Supreme Court Justices will remain the same as in the past.
Todd also reported on the DOJ case against Westchester County. DOJ found something lacking in the Voter Bill of Rights, produced by this Board.
Todd is not sure why they didn't contact this Board, but he reported that they are making some changes to bring it into compliance.
Commissioner Aquila had questions regarding the Justice Department, the HAVA case and the time line. Mr. Valentine answered all of her questions.
Commissioner Kellner and Commissioner Aquila asked questions about production of a new time line for HAVA. Todd stated that we are waiting for the new RFP for the testing lab to be completed and the new vendor is on board before producing a new time line for DOJ. Commissioner Kellner stated that we should, when appropriate, notify the county boards of elections of any new deadlines for the certification processing for budgeting purposes and about the use of Plan B machines again this year. There also needs to be modifications made to state law regarding the use of Plan B machines. There will not be full compliance with regards to accessibility without the Plan A machines, so the state law needs to be adjusted accordingly.
- **Election Operations:** Anna Svizzero reported on several items:
 1. They certified the ballot for 2007 as well as the ballots for three special elections which will be held March 27, 2007 in the 16th, 61st and 62nd Assembly Districts.

2. They continue to work on the VPAT issue regarding Liberty.

3. They continue to work on the EMS project. They met with Sequoia this week and have worked with Diebold and Avante as well.

4. Anna reported that they had a meeting with Microsoft concerning the software for the operating system. Commissioner Kellner stated that we need to keep the vendors apprised of developments with Microsoft and that we should be pushing for an open source code with Microsoft as we do with any other vendor.

That's related to Article 708-3 of the Election Law.

5. They are working on the new RFP for a testing lab. They are also working on a gap analysis with NYSTEC and are trying to make sure that when we use the words "should" and "would" in both Federal and State regulations, that vendors who respond to our RFP understand that they should be testing both of those things. Commissioner Kellner stated we should notify Ciber of any new RFP's once completed. Commissioner Aquila agreed.

6. Anna reported that the staff are reviewing the EMS training manuals and it's usability by the county boards of elections, since they are the ones who will be doing the programming for the ballots as opposed to the vendors. This process is taking a long time. The manuals are very large and the reviews take an inordinate amount of time to get done. There are five manuals to review and they have only completed one third of one manual in one month. When this process is finished, Anna feels that our staff will be more than able to assist the county board's staff with any questions they may have. Smaller county boards will definitely need our help in order to do this programming. Allison Carr stated that we are spending a huge amount of resources in time and people on this project and that other work in the Operations Unit is being put on hold because of this.

Commissioner Kellner feels that we need a system in place to evaluate whether the county boards are setting up the ballot correctly. We also need to find out if any problems that exist with the EMS before certifying any machines. The bottom line is that our staff need to become experts before any acceptance testing or ballot programming before the counties get involved. A long discussion ensued and at this point, there was discussion about NYSTEC'S involvement in all of this. Mr. Kosinski stated that there would be extra costs incurred and that amendments to NYSTEC'S contract have to be made. Commissioner Kellner asked whether we could bring some of this work in -house to save on consulting costs. Mr. Kosinski said that considering the time line work cannot be done in house since we do not have the personnel. We definitely need the consultants.

- **NVRA/PIO:** Lee Daghlian reported that aside from our normal business of press calls and regular business of the NVRA unit, there are several projects that we are working on.
 1. The RFP for the poll worker training curriculum. We had 20 vendors indicate that they may put in a bid. There will be a bid opening by OGS on March 15, 2007. We have no idea right now how many have actually responded. We have put together a review group to review all RFP's once OGS reviews the cost portions.

Lee also stated that he and Dan Valvo continue to work on the web casting project. He did inform the Governor's office that we do intend to purchase equipment and do the work ourselves. The actual vendor or program that we choose will be made available to

the Commissioners and the staff within a few weeks. The deadline to start web casting is July 1st, 2007.

Lee also stated that the county funds project is proceeding smoothly and seems to be speeding up. We have set up the vouchers system and a few vouchers have been processed. Lee also reported that agreements were signed for the NYS Fair in August of this year. He stated that we will maintain the same space as last year which consists of 3 tables. If we don't have machines to put in the space, we will use photographs as we did last year.

Lee reported that the arrangements for the conference in early May 2007 are completed on schedule and all materials have been sent to counties and vendors.

- **ITU:** George Stanton reported that his visit to Dublin, Ohio to get all the hardware and software installed is over. Everything seems to be in good shape. They will be ready to break it down and ship it when we are ready to make the installation here. We will then rebuild it here. They will first finish installing air conditioners and the power to the third floor of this building to take care of the upgrade. They plan to do the installation this weekend. They won't be able to do the satellite location in Westchester until April 9, 2007 because of hardware delivery. It will take about two days to complete the set up here and in Westchester County. It will take 2-3 weeks to do all the testing before the counties deliver any data.

The issue of connectivity, the servers have been installed in house. We will need to go to Schoharie County to do an actual test. This will be done in the near future.

George also reported that Saber is putting together a training manual for our staff so that we in turn can train the county boards on the use of the system.

He also reported that he got a letter from ES&S regarding contracts and any changes that need to be made at the county boards for the connectivity issue. They can't do it in our time frame and the county boards have two options: they can either work with ES&S's time schedule or go with another vendor. This will change the time line somewhat to get the system on line fully. There's a possibility that ES&S would subcontract this work or sell this product to another vendor. Commissioner Kellner brought up the issue of DMV and to find out what percentages don't match. We need to know this to make sure that the system is working properly. We need to do spot checks to find the cause of the non-matching between us and DMV. NVRA unit to look into.

- **Administration:** At this time Pat Tracey presented the budget which is attached. We asked that the 1.7 million be broken down by the next board meeting.
- **Campaign Finance:** Bill McCann reported on several issues:
 1. Groups that have failed to file have been notified and the process of taking judgements is continuing. There are also a group of local filers that haven't filed and letters have been mailed to them as well.
 2. Bill also reported that we need a new phone system in his unit to enable to monitor the staff so that they can check on the consistency of messages that staff is giving in response to certain questions. Bill spoke with CAPNET who stated they would meet with staff soon to decided which type of system would be the most effective.

3. Bill also reported that the seminar schedule is almost complete. The seminars are set to begin May 14, 2007 and there will be 18 seminars around the state.

4. He also reported that they have worked up a bill with the Senate staff to eliminate the need for local filers to file at the county boards on paper. It remains to be seen where that goes.

5. Lastly, Bill reported that he needs more staff and money to do the job properly. The Governor's request for additional staff will develop to ease the situation in his unit.

- **Old Business:** There was a proposal by Allison Carr and Peter Kosinski on the AIR Study. They are still waiting for feedback from the county boards to try and come up with a statewide standard. There was a long discussion about the different data that is required. The number of voters on the lever machines needs to be reworked in conjunction with the AIR Study. We are getting some data from Orange and Westchester Counties as to the number of voters that actually voted on their machines. The feeling is that by the next meeting we need to come up with the real numbers. Bob and Anna will gather some numbers and have interns review inspectors to find out the number of people and also what hours that they have lines, if they have any at all. All of this data should be gathered as soon as possible.

- **New Business:** Anna Svizzero produced a document concerning various aspects of the Liberty Voting Machine and its' compliance with the requirements of the 2005 VVSG and the State Board's Regulations, Part 6209. Report is attached. Instructions are needed for the vendors to specify which requirements work so that they can make the fix. There were other comments on this issue by Bo Lipari, Aimee Allaud and Bobby Witko from Liberty.

A report is attached from the counsels on the ballot diagrams and regarding what is a good mark on paper and what is a bad mark and what would void a ballot. There was a long discussion that we should try to agree fully on what is a good mark and place the emphasis on that instead of trying to make a list of bad marks. There will be an effort made on what we consider good and bad marks on ballots and it will be presented at the next board meeting. We have to put these out for public comment when this process is completed.

The meeting was adjourned at 3:35p.m. The next board meeting is scheduled for March 27th, 2007 at Noon in Albany, New York.