

Approved  
May 2, 2007

**Minutes of The New York State Board of Elections  
Tuesday, March 27, 2007**

The meeting of the Commissioners of the New York State Board of Elections was held at the Rockland County Board of Elections, 11 New Hempstead Road, New City, NY 10956 in the 1<sup>st</sup> Floor Conference Room. The meeting was called to order at 12:00 p.m. and was chaired by Commissioner Kellner. Commissioners Helena Donohue and Evelyn Aquila were also present. Commissioner Kelleher was absent. Staff present were Peter Kosinski, William McCann, Lee Daghlian, and Pat Murray. NYSBOE staff participating in the meeting via phone conference from Albany were Stanley Zalen, Tarry Breads, Todd Valentine, Allison Carr, Bob Brehm, and Anna Svizzero. Guests in attendance were Bo Lipari with Verified Voters, David Kogelman with the New York Democratic Lawyer's Council, Marion Sinek with Senator Hillary Clinton's office and Commissioner Sue Bahren with the Orange County Board of Elections, Joe Paolucci with DOB, Bob Gronczniak with NYSTEC, and Dennis Karius with ARISE.

**Minutes of February 20 and March 13, 2007: approved with 3-0 vote**

**Unit Updates:**

- **Legal Unit:** - Todd Valentine reported via telephone that they are reviewing the outline of the brief for the *Lopez-Torres* case which is on appeal to the U.S. Supreme Court. They are in the process of doing HAVA updates. They will be doing an update by phone with the Department of Justice (DOJ) on the 28<sup>th</sup> of March, 2007  
Todd reported that he is waiting for approval from the Legislature on the 2007 political calendar.
- **Election Operations:** Anna Svizzero reported via telephone on several items:
  1. EMS project is ongoing and she reported that Sequoia is completed. A review will be provided at the next Board meeting.
  2. Three special elections scheduled for March 27<sup>th</sup>, 2007.
  3. Completion of the RFP for the Independent Testing Authority which will be discussed at today's meeting.
- **NVRA/PIO:** Lee Daghlian reported on the planning for the NYSBOE Annual Conference has been completed.  
Lee also reported that the RFP for the Poll Worker Training is in the final stage. Our work with the evaluation team should be completed within a week to ten days.  
Commissioner Kellner asked about the status of the web casting and Lee reported that we have a vendor that we would like to choose but we need to do a test in the near future, when we can schedule a Board Meeting in Albany.  
Bob Brehm reported via telephone that we made our first payment to Madison County for the county funds project. It was a successful transaction and therefore there will be more payments to more counties soon.

- ITU:** George Stanton is out of town on IT business and has provided a written report in his absence. Approval is needed for the NTS contract covering counties to complete the interface match up between the counties and the State Board. The contract is for \$1.5 Million. **It was moved to accept the contract and was approved with a 3-0 vote.**
- Campaign Finance:** Bill McCann reported on several issues:

  1. The proposed judgement for the January 15, 2007 delinquent filers will be filed this week. Over 300 filers were sued for failure to file.
  2. The local filer process is moving along and over time this process should become smoother as filers become more educated with the state process.
  3. The 2007 handbook has been sent to the printers for publication and should be available shortly. Fewer copies than usual were printed in case the Legislature makes amendments to the law.
  4. The spring filer update is being prepared and will be printed and mailed in mid-April by OGS which will expedite the process.
  5. The Grade-13 opening has been filled off the list with a start date of April 12, 2007.
  6. Internal phone system modifications review, as mentioned at the last board meeting, is ongoing.
  7. Bill also noted that having Patty Lloyd as a manager in the unit has made a real difference in their operation and that Patty is doing a great job.

Commissioner Kellner reported on the campaign finance bill that is currently being reviewed by the Legislature. He has found that most legislators agree that we should end local filing as a requirement as filers now file electronically to NYSBOE. Mr. McCann said that he had been consulted about the negotiations and he was unaware of any opposition to end local filing. Orange County Commissioner Sue Bahren also reported that she was unaware of any opposition by county commissioners.

Commissioner Kellner proposed that if the Legislature cannot agree on the entire bill proposed by the Governor than perhaps NYSBOE could urge them to separately address the abolition of local filing.
- Old Business:** Discussions were continued regarding the written proposal that was circulated at the last board meeting relating to the number of voters per machine. There have been internal discussions between staff, however, certain issues remained outstanding including the number of privacy booths to be prescribed, and concerns regarding the Liberty numbers in light of comments in the AIR report relating to the VVPAT layout.

Data has been collected from neighboring states regarding the number of privacy booths per number of registered voters that are employed for use in polling places. Staff has determined that the average is 1 booth per 150 registered voters, but there were discussions about potentially lowering the number to 1 booth per every 100 voters for very large polling centers hosting more than 6,000 voters.

There was also much discussion relating to the extrapolation of the lever machine number to the optical scan numbers presented in the AIR report. While the extrapolation makes logical sense when applied to DRE's, there was some disagreement as to whether it makes sense to extrapolate the lever machine number to an optical scan machine.

After much discussion, a tentative agreement was made to the number of voters per DRE, that number being 550 voters per DRE, regardless of whether the DRE is a touchscreen or paper ballot overlay system. While there was a proposal that the optical scan number should be set at 1 machine per 4,000 voters, it was agreed that additional work needs to be done to determine the number of voters per optical scan system. Staff was instructed to consider the impact of the ballot which was used in the AIR study, since all ballots were intentionally undervoted to trigger the machine to reject the ballot, which inherently added time to the ballot scanning process. While the intent was to create a worst-case scenario, in a real election, not every ballot will be mismarked and that should be a consideration when setting the optical scan numbers.

The Board agreed that the counties will have the discretion to determine the number of additional machines that will be needed to meet the needs of the disabled in their communities, as well as to plan ahead to meet their needs during peak voting turnout times.

There is no written proposal for the AIR study involving the maximum number of voters assigned to a voting machine. Staff have identified several issues via e-mails that were discussed at length. These included whether the Liberty numbers seem to be extremely high and needed to be adjusted, the number of privacy booths required, and whether the number for precinct based optical scanners should be calibrated to the AIR test numbers for the lever machine using the same formula as proposed for DREs.

Commissioner Kellner raised three additional issues: how the NYSBOE should address undervotes, particularly on scanned ballots, writing into the guideline that county boards track the number of voters using the audio feature and take that into account when assigning voting machines, and adding a specific guideline on maximum waiting times.

There was lengthy discussion on all six of these issues. Commissioner Kellner indicated that the AIR study numbers for ballot scanning systems were based on an instruction to every voter to vote for less than all of the offices on the ballot. Therefore, when the voter fed the ballot into the scanner, the scanner notified the voter that the ballot had been rejected; the voter was asked whether to override the undervote warning and then the ballot was fed into the scanner with the operator pressing the undervote override mechanism for that machine. Commissioner Kellner noted that this process deprived the voter of the right to undervote without publicly disclosing that fact to the machine operator. Commissioner Kellner suggested that the commissioners need to focus on this issue and come to a reasoned policy decision after reviewing all of the options. He said that one option would be to include a place on the ballot where the voter could affirmatively indicate "I do not wish to vote for every office." Another option, favored by Orange County Commissioner Sue Bahren was to have a place for that option on the line for each office. Commissioner Aquila objected several times to the fact that we are even concerning ourselves with the under votes as she feels that it is the personal business of the voters as to which offices they decide to vote for. There was a discussion of the statutory and regulatory provisions. Commissioner Kellner proposed that the Legal Unit circulate a brief summary of the provisions in the statute and our regulations and that the Co-Executive Directors co-ordinate a staff report with their recommendations prior to our next Commissioner's meeting. All three commissioners agreed to the proposal.

Commissioner Kellner suggested that the staff report on the number of voters

assigned by other states to their machines. He thought that those numbers would be particularly relevant for ballot scanning machines that have been in use elsewhere for two decades. Commissioners Kellner and Aquila thought that all DRE's should have a single standard and suggested a maximum of 550 registered voters per machine. Anna Svizzero said she thought that number was too high and was higher than almost all other states. Commissioner Kellner suggested the maximum number for optical scanners should be 4,000 voters and explained his rationale for that number.

There was consensus that NYSBOE should establish the policy in a formal regulation. Peter Kosinski said that we have to make sure that our rationale for the numbers is clearly articulated and that the numbers should be defensible. The numbers should be backed up by empirical data. Most agreed that ultimately each county should have flexibility for the actual number of machines that would be needed at each polling site. There was consensus of the commissioners that Election Operations and the Legal Department should draft the addition to the regulations for the next Commissioners' meeting.

Pat Murray reported that the draft Part 6210 Regulations are ready to go to GOER on March 28<sup>th</sup> for publication and at that time the regulations would be posted on the web site.

- **New Business:** The RFP for the ITA services was approved by the Commissioners with a 3-0 vote. The Commissioners gave both Co-Executive Directors permission to make minor changes when they receive the OGS's recommendation. **A vote of 3-0 approved this action.**

**The meeting was adjourned to Executive Session for cases at 2:00p.m. After reconvening to General Session , the meeting was adjourned at 2:10 p.m.**

#### **Complaint Without Preliminary Determination**

**CMP07-02 - Closed/ 3-0 vote**

**CMP07-06 - Closed/ 3-0 vote**

**CMP07-10 - Closed/ 3-0 vote**

**CMP06-45 - Closed/ 3-0 vote**

**The next board meeting is scheduled for April 30<sup>th</sup>, 2007 at Noon at the DoubleTree Hotel in Syracuse, NY.**