

Approved  
January 4, 2007

**Minutes of The New York State Board of Elections  
Thursday, December 14, 2006**

The meeting of the New York State Board of Canvassers was called to order at 12:20 p.m. in the 4<sup>th</sup> Floor Conference Room at the offices of the New York State Board of Elections in Albany, New York. The meeting was chaired by Commissioner Neil Kelleher. Commissioners present were Douglas Kellner, Evelyn Aquila and Helena Donohue. Staff present were Peter Kosinski, Stanley Zalen, Todd Valentine, Pat Murray, Michael Johnson, William McCann, Lee Daghlian, Bob Brehm, Deirdre Hammer, Anna Svizzero, Allison Carr, Tarry Breads and George Stanton. The guest list is attached.

The Board of Canvassers certified the election results of the November 7, 2006 General Election for Governor, Lt. Governor, Comptroller, Attorney General, U.S. Senate, Supreme Court Justices, Congress, State Senate and State Assembly. Commissioners and staff present the same.

The Canvassers meeting adjourned at 12:40p.m. and the regular meeting of the State Board of Elections convened at 12:41p.m.. The meeting of the Commissioners was chaired by Commissioner Neil Kelleher. Commissioners and staff present the same.

**Minutes of November 29, 2006** -tabled.

**Unit Updates:**

- **Legal Unit:** - Todd Valentine reported that we, along with the Attorney General's office filed a motion to dismiss the *Suffolk County BOE v. NYSBOE* case on December 8, 2006. The return date is January 18, 2007. Our understanding is that Nassau County BOE intends to file an amicus brief in support of this case. Mr. Valentine also reported that the *Hayden v. Pataki* case is on it's third appeal. The Attorney General's office filed a brief on behalf of NYSBOE.
- **Election Operations:** Anna Svizzero reported that:
  - 1) They collected the votes and prepared the necessary documents to certify the General Election;
  - 2) They have begun to collect the year end surveys from all county boards to develop the annual report. This will be done a little differently this year by requesting this information on-line rather than via fax as has been done in previous years;
  - 3) the machine certification process is ongoing;
  - 4) the staff is reviewing the EMS documents from all vendors and will develop a report for the Board;
  - 5) her unit is working with NYSTEC in developing new voting system procedures and inventory management procedures for our county boards. Recommendations will be made and will advise NYSTEC to review and a report will be made available at a later date.

- 6) NYSBOE management staff met with Sequoia on the optical scan ballot layout issues. They are presently considering all options available to them;
- 7) On December 18<sup>th</sup>, 2006 there will be a meeting with NYSTEC, NYSBOE and all county boards at the Crowne Plaza in Albany, NY for a HAVA update. This meeting will be open to the public;
- 8) The witness builds: CIBER is scheduling the witness builds during the next month for the vendors; Commissioner Kellner commented that no staff from this Board should be attending unless completely trained.
- 9) the AIR study has been completed and a draft version provided to us. Air representatives are with us today to discuss it further.

- **NVRA/PIO:** Lee Daghlion reported on several issues:

- 1) he presented a new web based Freedom of Information Request (FOIL) form for approval by the Board. This form will be used only for information requested from the statewide voter registration database. However, this new form does not have a fee attached for the purchase of the CD. After a lengthy discussion on the legality of this fee, the Commissioners approved the form with a vote of 4-0. This will be added to our web page as soon as possible;
- 2) In response to a request by Commissioner Kellner, George Stanton has assigned one of his staff to look into the possibility of web casting our monthly Commissioner's meetings. Lee stated that he will have a report at a later date;
- 3) the contracts for the federal and state grants for the county boards have been approved by OGS and sent back to us for distribution. A memo was sent to all county boards on December 5, 2006 for them to sign and return to us for our signatures. Once this is completed the counties will be able to submit vouchers to get reimbursed for any monies spent on poll worker training, voter outreach and poll site accessibility issues;
- 4) Lee recommended that the 2008 NYSBOE annual conference be held at the Holiday Inn in Syracuse, NY. 2007 will be the third year for new management at the Wyndham Syracuse and the Holiday Inn can accommodate a larger group of people. In order to confirm a date for the last week in April, we need an answer immediately. The Commissioners moved to approve 4-0.

- **ITU:** George Stanton reported on several items:

- 1) That his unit is very busy with various projects. The VPN project for NYSVoterII continues, 40 of the 58 county connections are finished;
- 2) the statewide database review sessions with various committees and Saber have been completed. The IAD sessions are completed and they are finally writing requirements. When they are finished they will send the scope of the work to the vendors;
- 3) Pilot counties have been chosen for the first tryout for NYSVoterII. There are approximately 60% of the state's voters are involved in the pilot project. They are still reviewing hardware requirements for three of those counties. New York City is included in the pilot program.
- 4) They are getting quotes for hardware and software from vendors. Also, the steering committee met to discuss the costs and requirements for the primary data site. The cost is about \$150,000 to upgrade this building which is where everyone felt the primary site

should be. The Commissioners moved to accept that with a 4-0 vote. Also the steering committee discussed a back-up center, whether it should be hot, warm or cold site and where it should be. George has attached a report. Commissioner Kellner referred to the memo that there appeared to be a 2 million dollar cost saving and he moved that we accept that report to have a hot back-up site. It was approved with a 4-0 vote.

- **Campaign Finance:** Michael Johnson reported that they are finishing up the 2005 annual report and it should be ready shortly. Things are fairly quiet between filing dates. They are continuing to work on issues such as follow up with county filers. Commissioner Kellner announced that Michael will be leaving the Board for the position of Counsel to the Assembly Ways and Means Committee and that his last day on the job will be December 20<sup>th</sup>, 2006. There were congratulations all around and Michael thanked the Board for the chance to serve the Board. Commissioner Kellner spoke for everyone when he thanked Michael for his work with us. Commissioners Aquila and Donohue concurred.
- **Old Business:** Anna Svizzero asked that an extension be authorized on the Plan B devices used in the 2006 elections for the 2007 elections because some counties have village elections in March 2007. We won't have new machines certified by then. There was discussion that the Populex machine doesn't really fill our needs but in the end it was recommended that we agree to an extension for all three machines but that cannot buy any additional Populex machines. Also agreed to notify the counties of this and advise them that they cannot use these machines in September 2007 elections. In response to a question by Commissioner Aquila, it was stated that there were very few complaints concerning the new machines in the last election. Allison Carr stated that some counties bought scanners for the Populex machines which does show the names of all candidates. Anna recommended that we reach out to Populex to see if any changes have been made to their machines. The extension was granted under the above conditions until September 1, 2007. The vote was 4-0 affirmative.
- **New Business:** Commissioner Kellner mentioned the fact that the 2005 Annual Report hasn't been completed and suggested that we wait for the completion of the 2006 Annual Report and do both reports together. Lee Daghljan informed the Commissioners that he has made every effort to get the Unit Heads to finish their reports and he reminds them every January to turn them in. But this year we are still waiting for 2 reports and Lee is urging them to complete them as soon as possible.

Duane Norris from AIR is here to answer questions and make a small presentation about the study. He presented the raw numbers and there were questions from the Commissioners about what these numbers meant. There are some shortcomings in the testing and in the report since there was no analysis by feature, ie: "sip and puff", it was just a review of the entire machine. Commissioner Kellner stated that we do need data on how long it takes to use the audio feature on the DRE's by itself and Mr. Morris stated that there really weren't enough disabled people in the test to get reliable data. He did agree that was a shortcoming and that they would probably need to re-test for this issue and the Commissioners agreed. Commissioner Kellner stated anecdotally that the sip and puff device was used very quickly by those who use that feature in daily living, but

that the audio device took a long time. There was further discussion and questions about the report and about using the lever machines as a baseline. In the end, the assessment was that in order to get a complete picture, that further testing be done. The Commissioners thanked him for all his efforts.

Todd Valentine asked to propose and put out for public comment an amendment to Election Law Part 6209.9 There was a motion to make that change and a vote of 4-0 to approve was made. That's the form of the Sequoia Optical Scan ballot. Per Todd, that form does not fit the statute and the question is do we continue testing that system? There was a meeting with Sequoia last week and they have not answered us as to whether they want to continue. They probably will need new hardware to make it right. It was so moved that we adopt a report of the counsel that their certification application be denied for this reason. It was moved 4-0 by the Commissioners. Peter Kosinski asked can they fix it and if they can, can they reapply. There was continued discussion about the wording of the notice to Sequoia. The Commissioners recommended that a letter be drafted by the election Operations Unit for that purpose.

Machine contracts status: Commissioner Kellner stated that those contracts sent to OGS and the Comptroller haven't been approved by the Board yet. Commissioner Kellner had objections to the fine print, particularly Election Law 7204 which pertains to the length of time to sign off on contracts. Todd Valentine felt that possibly this section of the Election Law does not pertain to this type of contract and that we are covered by certain sections of the unconsolidated law, and that it is a part of our regulations. There was also discussion on the bonding of these contracts and Commissioner Kellner stated that someone on our staff should be following up on these issues. Todd stated that we rely on OGS and the Comptroller's office for their expertise with drafting state contracts. Mr. Kosinski stated that we have not waived our rights and we will respond after review.

Next, the HAVA budget: Stan Zalen stated that in the absence of Pat Tracey that Bob Brehm put together a document that reported to show the monies expended and what will be spent in the future on HAVA. There were questions about it since some of the costs were the 20% contingency fee and the actual cost of some testing can affect the total. After further discussion, it was agreed that when Pat Tracey returns that they would review this again. There is a copy of this report attached.

Next: Mr. Kosinski stated that we do not have a complete picture of the certification process because the vendors keep changing the configurations of their hardware and software in hopes of meeting the standards. He felt that we need to reach a point shortly where there be no more changes and that we can continue the certification process to know exactly what machines can and will be certified. The fact is that we need to know this information so that we can report to the Federal Courts and the Department of Justice and possibly sit down with these two parties and renegotiate. Commissioner Kellner stated that NYSTEC and CIBER should be informing us of these procedures. Some machines seem to have fatal flaws and we need to know if these flaws can be corrected so as not to delay the process.

Commissioner Kellner agrees with Mr. Kosinski's philosophy that we have to schedule a date where no more fixes are made and the we continue with the process. It was agreed that we are in fact doing the vendor's beta testing for them and it should have been done before presenting the machine to us for certification. We agreed that's true and

that this creates many issues, but that's the way it is since these testing formats have never been developed and used before. We have the strictest rules and regulations in this country to test and these testing authorities have never tested them before. More discussion ensued about whether we can find out from the machine vendors if they can witness build the machines and then start from that point. NYSTEC feels that the witness builds can be done at this point, but that no machine could actually pass today. Commissioner Kellner stated that maybe we should fail them now and start over again and then they can do their own beta testing and continue certification with remediation as we do now. He said we could also stop the certification process and let the vendors resubmit modified machines for certification. This would require going to the Federal Court, the Department of Justice and the Legislature to explain and to get relief because we probably wouldn't be able to meet the 2007 requirement. A question was asked on whether a risk assessment of the situation would help. It would help us find out where we are. It was suggested to have the witness builds finished by January 4, 2007 in keeping with the schedule.

Bo Lipari agreed with Anna's suggestion to have a risk assessment study done. NYSTEC was asked if the schedule was too short and if the risk assessment was a good idea. NYSTEC felt that it would be helpful. There was a consensus that the risk assessment study was a good idea and we should come up with a plan and submit it on December 21, 2006 for the vendor meeting.

The board adjourned to executive session at 3:30 p.m. to discuss enforcement cases.

**The meeting was adjourned at 3:35p.m. The next board meeting is scheduled for January 4<sup>th</sup>, 2007 in Albany, New York.**