

New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Localities' Procurements of Paper Ballots

State Board of Elections



Report 2013-S-36

March 2015

Executive Summary

Purpose

To determine whether the State Board of Elections provided Local Election Boards with sufficient guidance to ensure that paper ballots were properly procured and the costs for unused ballots were minimized. The audit covered the period January 1, 2010 to December 31, 2012.

Background

In New York State, each of the 57 counties outside of New York City has a County Board of Elections (County Board) responsible for administering all Federal, State, and local government elections within their respective geographic areas. Elections within the five counties in New York City are jointly administered by the New York City Board of Elections. For purposes of this report we classify the New York City Board and the County Boards as the “Local Election Boards.” The New York State Board of Elections (State Board) is a bipartisan agency responsible for administering and enforcing all laws relating to elections in the State and providing oversight to the Local Election Boards. During the fiscal year ended March 31, 2013, the State Board was appropriated a total of \$5.3 million for operations. In calendar year 2010, Local Election Boards switched to optical scanning voting machines (which use paper ballots) from traditional lever-operated machines. State Election Law requires Local Election Boards to procure an adequate number of paper ballots for each election district within their respective jurisdictions.

Key Findings

We determined that the State Board has not provided sufficient guidance to Local Election Boards on procuring paper ballots. As a result, the ballot procurement processes used by the 13 Local Election Boards we visited resulted in significant unnecessary costs. Several Local Election Boards consistently overestimated the number of ballots needed for each election. In fact, about 14.3 million (62.3 percent) of the nearly 23 million ballots acquired by the 13 Local Election Boards went unused. We estimate that the Local Election Boards we visited could have saved, in the aggregate, about \$10 million during the audit period by competitively procuring ballots and by using sound historical data to project the numbers of ballots needed.

Key Recommendations

- Work with the Local Election Boards that do not print their ballots in-house to help ensure that paper ballots are procured through vendor competition.
- Work with Local Election Boards to develop a sound and reasonable methodology to project the number of ballots needed for each election. Use accurate historical data of voter turn-out and the number of ballots procured to develop estimates of ballot needs.
- Periodically meet or communicate with Local Election Board officials to discuss emerging administrative and fiscal issues and to resolve their questions and concerns.

Other Related Audits/Reports of Interest

[New York City Board of Elections: Voting-Related Problems September 2010 Primary Election \(2010-N-6\)](#)

[County Boards of Elections: Voting-Related Problems September 2010 Primary Elections \(2010-MR-5\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

March 30, 2015

Douglas A. Kellner
Co-Chair
State Board of Elections
40 North Pearl Street
Albany, NY 12207

James A. Walsh
Co-Chair
State Board of Elections
40 North Pearl Street
Albany, NY 12207

Dear Commissioners Kellner and Walsh:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York State Board of Elections entitled *Localities' Procurements of Paper Ballots*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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Background

In New York State, each of the 57 counties outside of New York City has a Board of Elections (County Board) responsible for administering all Federal, State, and local government elections within their respective geographic areas. Elections within the five counties in New York City are jointly administered by the New York City Board of Elections. For purposes of this report we classify the New York City Board and the County Boards as the “Local Election Boards.”

The New York State Board of Elections (State Board) is a bipartisan agency responsible for administering and enforcing all laws relating to elections in the State. The State Board is responsible for providing oversight to the Local Election Boards throughout the State. In addition to ensuring fair and broad ballot access for candidates throughout the State, the State Board investigates election law violations and oversees and enforces campaign financial disclosure filing requirements. During the fiscal year ended March 31, 2013, the State Board consisted of four commissioners and 54 staff members and was appropriated a total of \$5.3 million for operations.

In calendar year 2010, New York State’s Local Election Boards began using optical scanning voting machines (or new machines) that use paper ballots and replaced the traditional lever-operated machines. Voters mark their votes on the paper ballots, which are fed into the new machines to record and tabulate the votes. State Election Law requires each Local Election Board to procure an adequate number of paper ballots for each election district within their respective jurisdictions.

To perform our audit, we analyzed pertinent election-related data for 13 Local Election Boards throughout New York State. We interviewed officials from those 13 Local Boards as well. The 13 Local Boards included New York City and Albany, Chautauqua, Erie, Essex, Nassau, Orange, Oswego, Rockland, Schenectady, Seneca, Warren, and Westchester Counties. For 2013, the numbers of registered voters in the selected localities are detailed in Exhibit A. For the period from 2010 through 2012, the average voter turnouts by election type (presidential, gubernatorial, and local) for those localities are detailed in Exhibit B.

Audit Findings and Recommendations

We determined that the State Board did not offer sufficient guidance to Local Election Boards on procuring paper ballots. As a result, the ballot procurement processes used by the Local Election Boards we visited resulted in significant unnecessary costs. Several Local Election Boards consistently over-estimated the number of ballots they needed for each election. In fact, about 14.3 million (62.3 percent) of the nearly 23 million ballots acquired by the 13 Local Election Boards went unused. We estimate these Boards could have saved, in the aggregate, about \$10 million during our audit period by using competitive bidding procedures and by projecting the number of ballots needed based on sound analysis of pertinent historical data.

Procurement Practices

Pursuant to General Municipal Law Section 103(1), purchases of goods and services exceeding \$20,000 (in the aggregate) within a 12-month period shall be awarded to vendors via a process of competitive bidding. In addition, according to General Municipal Law Section 103(16), local government entities may avail themselves of certain State-wide contracts awarded by the New York State Office of General Services (OGS). These contracts are intended to offer the purchaser a quality product at a fair price.

Prior to the implementation of the new machines, State and Local Election Board officials were informed by OGS officials of the change in voting machines and the new machine manufacturers (Dominion Voting Systems and Election Systems and Software) that were awarded the State contract by OGS to supply the new machines. According to three of the Local Election Board officials we surveyed, they were also informed by OGS that Fort Orange Press and Phoenix Graphics were “certified” vendors whose paper ballots were compatible with the new machines. As such, most of the Local Election Boards we visited procured their paper ballots from the certified vendors, though some opted to print ballots in-house. (See Table 1.)

Table 1

| No. | Local Election Board | 2010 Procurement Method | 2010 Price Per Ballot | 2011 Procurement Method | 2011 Price Per Ballot | 2012 Procurement Method | 2012 Price Per Ballot |
|-----|----------------------|-------------------------|-----------------------|-------------------------|-----------------------|-------------------------|-----------------------|
| 1. | Albany County | Phoenix | \$0.55 | Phoenix | \$0.55 | Fort Orange | \$0.39 |
| 2. | Chautauqua County | Fort Orange | 0.55 | In-House | 0.19 | In-House | 0.19 |
| 3. | Erie County | In-House | 0.23 | In-House | 0.23 | In-House | 0.23 |
| 4. | Essex County | Fort Orange | 0.54 | Phoenix | 0.57 | Phoenix | 0.57 |
| 5. | Nassau County | Phoenix | 0.55 | Phoenix | 0.55 | Phoenix | 0.42 |
| 6. | New York City | Phoenix | 0.52 | Phoenix | 0.52 | Phoenix | 0.52 |
| 7. | Orange County | Phoenix | 0.57 | Phoenix | 0.57 | Phoenix | 0.57 |
| 8. | Oswego County | Phoenix | 0.57 | Phoenix | 0.57 | Phoenix | 0.57 |
| 9. | Rockland County | Phoenix | 0.53 | Phoenix | 0.52 | Phoenix | 0.45 |
| 10. | Schenectady County | In-House | 0.29 | In-House | 0.29 | In-House | 0.29 |
| 11. | Seneca County | Phoenix | 0.57 | Phoenix | 0.57 | Phoenix | 0.57 |
| 12. | Warren County | Fort Orange | 0.57 | Fort Orange | 0.57 | Fort Orange | 0.57 |
| 13. | Westchester County | Phoenix | 0.59 | Fort Orange | 0.53 | Fort Orange | 0.53 |

We asked officials at each Local Election Board why they chose their specific procurement methods over other options. The consensus of these officials was that the State Board had not provided clear and comprehensive guidance on the options available to procure paper ballots or the related competitive bidding requirements. For example, Nassau County officials believed they were required to use their voting machine manufacturer's (ES&S) preferred printing company (Phoenix Graphics) because it was the only "certified printer" for their machines. Also, Westchester County officials were concerned that ballots obtained through competitive procurement might be incompatible with the new machines.

We obtained the estimated per ballot costs available to Local Election Boards through competitive procurement and determined that significant cost savings could be achieved through that method. Specifically, the selected Local Election Boards could have saved from \$10,788 (in Seneca County) to \$2.4 million (in New York City) if they competitively procured their ballots. The Local Election Boards that printed ballots in-house would not have saved money through competitive bidding because the in-house unit costs were less than the unit costs (\$0.35 per ballot) obtained through vendor competition. (See Table 2.)

Table 2

| No. | Local Election Board | 2010-12 Average Price Per Ballot | Average Competitive Bid Price* | Potential Savings - Competitive Bid | | | Total Savings |
|--------------|----------------------|--|--------------------------------------|-------------------------------------|--------------------|--------------------|--------------------|
| | | | | 2010 | 2011 | 2012 | |
| 1. | Albany County | \$0.50 | \$0.35 | \$60,800 | \$29,680 | \$6,746 | \$97,226 |
| 2. | Chautauqua County | 0.31 | 0.35 | 16,599 | 0 | 0 | 16,599 |
| 3. | Erie County | 0.23 | 0.35 | 0 | 0 | 0 | 0 |
| 4. | Essex County | 0.56 | 0.35 | 3,942 | 4,356 | 4,879 | 13,177 |
| 5. | Nassau County | 0.51 | 0.35 | 227,720 | 204,122 | 72,803 | 504,645 |
| 6. | New York City | 0.52 | 0.35 | 898,867 | 589,220 | 914,431 | 2,402,518 |
| 7. | Orange County | 0.57 | 0.35 | 32,839 | 32,549 | 42,649 | 108,037 |
| 8. | Oswego County | 0.57 | 0.35 | 12,228 | 10,571 | 13,706 | 36,505 |
| 9. | Rockland County | 0.50 | 0.35 | 23,584 | 21,208 | 16,369 | 61,161 |
| 10. | Schenectady County | 0.29 | 0.35 | 0 | 0 | 0 | 0 |
| 11. | Seneca County | 0.57 | 0.35 | 3,623 | 3,249 | 3,916 | 10,788 |
| 12. | Warren County | 0.57 | 0.35 | 10,538 | 9,328 | 8,976 | 28,842 |
| 13. | Westchester County | 0.55 | 0.35 | 139,246 | 117,117 | 100,395 | 356,758 |
| Total | | \$0.48 | \$0.35 | \$1,429,986 | \$1,021,400 | \$1,184,870 | \$3,636,256 |

*The quote from one of the three vendors was for purchases exceeding 100,000 ballots. Consequently, the potential savings for several of the comparatively lower volume counties could be slightly less than indicated in the table. Nevertheless, the estimated savings for the larger (and majority) of the localities listed would remain the same, under the model we applied. Moreover, the total estimated savings would not be materially affected.

Estimating the Number of Ballots Needed

Part 6210.19(c)(1) of the State Board's regulations provide that the Local Election Boards are obligated to deploy sufficient voting systems and resources on Election Day such that each voter can cast a ballot, and no voter need wait any longer than 30 minutes to vote. We determined that the State Board has not promulgated official, universal guidelines for the Local Election Boards to follow to estimate the number of ballots to procure for the various elections (e.g., primaries, general elections, presidential elections). It should be noted that more voters participate in general elections than primaries; and presidential elections usually bring out more voters than local elections. Thus, different numbers of ballots are necessary for each election. Due in part to a lack of guidance from the State Board, the Local Election Boards used widely varying methods to estimate the quantity of ballots needed. Consequently, some Local Election Boards spent material sums on unnecessary ballots.

The following are examples of the different methodologies employed by the Local Election Boards we contacted:

- Nassau and Warren County Local Election Boards procured between 100 and 110 percent of the active voters in their respective counties for the previous four years, regardless of the election type;
- Schenectady County added 25 percent to the historical voter turn-out for the particular type of election being held (i.e., local, gubernatorial, or presidential);
- Westchester County procured ballots based on 60 to 70 percent of the total number of registered voters; and
- New York City used various percentages of active voters during our three-year audit period (110, 75, and 115 percent, respectively).

Although these were the stated methods used by the respective Local Election Boards, we determined that the noted percentages were not always applied, based on our analysis of ballots purchased and the number of registered and/or active voters.

Using historical data (including voter turnout for each type of election during the audit period) and the 10 percent buffer some Local Election Boards used, we estimated the potential cost savings they could achieve by better projecting the number of ballots needed for each election. To do so, we determined the number of ballots procured by the selected Local Election Boards during our audit period for three sampled elections, the respective procurement costs, and the number of unused ballots for each election. We then estimated how many ballots should have been procured based on 110 percent of the average actual voter turnout for those specific elections. As illustrated in Table 3, the selected Local Election Boards could have saved about \$6.5 million by better projecting the number of ballots needed.

Table 3

| No. | Local Election Board | 2010-12 Total Ballots Procured | 2010-12 Total Ballot Costs | 2010-12 Unused Ballots | 2010-12 Unused Ballot Costs | 2010-12 Potential Savings* |
|---------------|----------------------|---|-------------------------------------|------------------------------|--------------------------------------|----------------------------------|
| 1. | Albany County | 621,050 | \$314,594 | 310,078 | \$165,922 | \$135,602 |
| 2. | Chautauqua County | 221,620 | 71,834 | 103,967 | 34,872 | 27,677 |
| 3. | Erie County | 1,444,795 | 332,303 | 460,489 | 105,912 | 80,407 |
| 4. | Essex County | 62,860 | 35,178 | 23,770 | 13,352 | 6,677 |
| 5. | Nassau County | 3,199,250 | 1,624,382 | 2,020,308 | 1,050,171 | 934,913 |
| 6. | New York City | 14,132,458 | 7,348,878 | 9,957,832 | 5,178,073 | 4,609,544 |
| 7. | Orange County | 491,076 | 279,913 | 153,075 | 87,253 | 92,782 |
| 8. | Oswego County | 165,930 | 94,580 | 59,716 | 34,038 | 24,242 |
| 9. | Rockland County | 419,457 | 207,970 | 138,261 | 69,634 | 55,776 |
| 10. | Schenectady County | 237,500 | 68,875 | 80,445 | 23,329 | 17,429 |
| 11. | Seneca County | 49,040 | 27,953 | 17,546 | 10,001 | 5,894 |
| 12. | Warren County | 131,100 | 74,727 | 62,120 | 35,408 | 30,353 |
| 13. | Westchester County | 1,788,590 | 982,764 | 926,450 | 508,263 | 471,968 |
| Totals | | 22,964,726 | \$11,463,951 | 14,314,057 | \$7,316,228 | \$6,493,264 |

*Using 110% of historical voter turnout for each type of sampled election

State Board officials advised us that it would be rather difficult to issue one set of guidelines for all of New York's Local Election Boards due to the unique circumstances that can exist among the State's many election districts. While we acknowledge the different procurement practices used by the various Local Boards, certain basic data sets (such as the historical voter turnout by election type) do exist and can be applied in each Board's estimation. Consequently, we concluded that the State Board should provide additional guidance to the Local Boards to help them minimize the costs of unused ballots.

Recommendations

1. Work with the Local Election Boards that do not print their ballots in-house to help ensure that paper ballots are procured through vendor competition.
2. Work with Local Election Boards to develop a sound and reasonable methodology to project the number of paper ballots needed for each election. Use accurate historical data of voter turn-out and the number of ballots procured to develop estimates of ballot needs.

3. Periodically meet or communicate with Local Election Board officials to discuss emerging administrative and fiscal issues and to resolve their questions and concerns.

Audit Scope and Methodology

The objectives of our audit were to determine if the State Board of Elections provided Local Election Boards with sufficient guidance to ensure that paper ballots were properly procured and the costs for unused ballots were minimized. We also sought to determine if 13 selected Local Election Boards used effective practices to procure ballots and minimize costs for unused ballots. The 13 Local Boards included New York City and Albany, Chautauqua, Erie, Essex, Nassau, Orange, Oswego, Rockland, Schenectady, Seneca, Warren, and Westchester Counties. The audit covered the period January 1, 2010 to December 31, 2012.

To accomplish our objectives and assess the related internal controls, we reviewed the governing statutes of the State Board as well as the 13 Local Election Boards we visited. We interviewed responsible officials at these Boards to understand their paper ballot procurement procedures and the guidance the Local Boards received from the State Board. We also met with OGS officials to determine OGS's role in the paper ballot procurement process. To calculate our estimated savings, we compared the actual paper ballot purchase costs of the selected boards to the ballot prices that could have been obtained through competitive procurement. We also compared the number of actual ballots purchased by the selected Local Boards to their respective historical voter turnouts.

We conducted our audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V,

Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to State Board officials for their review and formal comment. We considered the State Board's comments in preparing this report and have included them at the end of it. In their response, State Board officials indicated that they have consistently taken actions related to our report's recommendations. Officials further indicated that they will continue to study the issue and provide guidance to Local Election Boards. Our rejoinders to certain State Board comments are included in the report's State Comptroller's Comments.

In addition, the State Board included several lengthy exhibits with its response. Those exhibits are not appended to this report, however, they will be maintained on file at the Office of the State Comptroller.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Co-Chairs of the State Board of Elections shall report to the Governor, State Comptroller, and leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A

Selected Local Election Boards Registered Voters

| No. | Local Election Board | Registered Voters as of April 2013 | Percentage of State Voters |
|-----|----------------------|------------------------------------|----------------------------|
| 1. | Albany County | 195,677 | 1.65 |
| 2. | Chautauqua County | 87,292 | 0.73 |
| 3. | Erie County | 607,666 | 5.12 |
| 4. | Essex County | 26,489 | 0.22 |
| 5. | Nassau County | 966,392 | 8.14 |
| 6. | New York City | 4,727,307 | 39.8 |
| 7. | Orange County | 216,901 | 1.83 |
| 8. | Oswego County | 74,162 | 0.62 |
| 9. | Rockland County | 185,825 | 1.56 |
| 10. | Schenectady County | 97,165 | 0.82 |
| 11. | Seneca County | 20,673 | 0.17 |
| 12. | Warren County | 44,811 | 0.38 |
| 13. | Westchester County | 585,003 | 4.93 |

Exhibit B

Selected Local Election Boards Average Voter Turnout by Election Type

| No. | Local Election Board | Gubernatorial Election | Local Election | Presidential Election |
|-----|----------------------|------------------------|----------------|-----------------------|
| 1. | Albany County | 113,994 | 77,666 | 146,879 |
| 2. | Chautauqua County | 40,160 | 34,175 | 60,204 |
| 3. | Erie County | 305,912 | 247,094 | 442,514 |
| 4. | Essex County | 14,345 | 13,059 | 18,780 |
| 5. | Nassau County | 399,428 | 265,756 | 621,184 |
| 6. | New York City | 1,433,116 | 899,174 | 2,456,708 |
| 7. | Orange County | 89,822 | 66,119 | 142,446 |
| 8. | Oswego County | 34,351 | 27,431 | 50,328 |
| 9. | Rockland County | 85,925 | 65,410 | 130,584 |
| 10. | Schenectady County | 53,097 | 38,591 | 69,471 |
| 11. | Seneca County | 10,778 | 9,376 | 14,948 |
| 12. | Warren County | 22,200 | 17,678 | 30,862 |
| 13. | Westchester County | 269,502 | 177,701 | 398,330 |

Agency Comments



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February 23, 2015

Mr. Frank Patone
Audit Director
123 William Street
New York, NY 10038

Dear Mr. Patone:

The Comptroller's Division of State Government Accountability report entitled "Localities' Procurements of Paper Ballots" includes three key recommendations. The State Board of Elections is encouraged to: (i) work with local election boards to ensure ballots are procured through competitive bidding; (ii) work with local boards to develop a sound methodology to project ballot needs, and (iii) periodically meet with local boards to discuss emerging administrative and fiscal issues and to resolve their questions and concerns. The State Board of Elections has consistently done these things, and we welcome the opportunity to respond to the draft report to provide background on procurement practices and the art of determining quantities of ballots to be purchased.

BALLOT PROCUREMENT

Procurement of election ballots is primarily the responsibility of county boards of elections and the New York City Board of Elections. Nevertheless, the State Board of Elections is responsible for providing operational oversight and advice to the local election boards throughout the state. To that end, the State Board has regularly communicated with Boards of Elections about the ballot creation, production and purchase processes.

Legal Framework

Local boards of elections are independent bipartisan entities supported by county or city appropriations. Each board manages its own operational procurements from local funds in accordance with local procurement practices. The State Board does not exercise jurisdiction over any local board's budgetary functions, financial controls or

procurements from local funds¹. This framework is statutory. Election Law 4-136 provides that “the expenses of providing polling places, voting booths, supplies therefore, ballot boxes...and equipment or ballot counting devices...shall be a *charge upon the county...*” [emphasis added] County boards certify their expenses to the clerk of the legislative body annually (County Law 361-a; Election Law 4-138). As county charges, expenses of the county boards are subject to audit and payment provisions of County Law 369, and the county purchasing agent (responsible for county procurements and bidding processes) has jurisdiction (County Law 625, 626).

Notice to Boards- Applicable State and Local Procurement Rules Apply

The State Board has made all county boards aware of the requirement to comply with state and local procurement obligations. Each was required to sign a formal acknowledgement of that obligation in order to receive HAVA-fund reimbursements for accessibility-related purchases, voter outreach and staff training and other goods and services related to compliance with HAVA and the furtherance of the uniform, accurate and accountable conduct of elections in New York. The form of this attestation is attached as Exhibit “A”.

The State Board has, and will continue to educate county boards as to all legally-permissible methods to procure ballots. In addition to procurement via competitive bidding, the State Board has made, and will continue to make, county boards aware of applicable options to competitive bidding. These include, but are not limited to “piggybacking” on contracts let by other governmental entities (GML § 103(16)) as well as procurements made from OGS-negotiated state contracts. As to “piggybacking”, the State Board has, and will continue to educate county boards as to the requirements for a county board to “piggyback” on contracts let by other governmental entities. The State Board has recognized the efficiencies that such methodology has produced for county boards that have employed this method.

Ballot Procurement Evolution

Ballot procurement is not a new process in New York. All boards have purchased ballots—or printed their own— even before the transition to optical scan voting systems. For decades local boards purchased paper absentee ballots, paper emergency ballots and paper affidavit ballots. Local boards, with few exceptions, competitively bid these purchases through their respective county procurement process or procured them from OGS-negotiated state contracts.

With the move to optical scan ballots, the specifications for ballots and the number needed changed, but the process to buy ballots did not fundamentally change².

¹ The State Board along with the Office of General Services (OGS) does administer Help America Vote Act (HAVA) grant programs.

² Due to the need to purchase ballots with new specifications quickly immediately after the State Board certified new voting systems, the OGS contracts made available to the local boards for the purchase of

The State Board mandated in regulation Part 6210 that voting system vendors provide detailed ballot printing specifications which could be used by local boards in their bid specifications. As required, both ES&S and Dominion Voting Systems, the vendors of the two certified precinct based voting systems approved for use in New York, furnished their detailed printing specifications. They are attached as Exhibit "B".

In-House Ballot Printing

The State Board has supported and provided assistance to counties opting to print their own ballots. The State Board approved applications to purchase printing equipment using federal grant funds and applied for waivers on behalf of applicant counties to use the federal funds for these purchases. The State Board has directed counties expressing an interest in in-house printing to various resources including the those county boards with experience in the production of ballots

"Certified" Ballot Printers

The State Board has consistently communicated that local boards are not required to purchase ballots from any particular printer, and the State Board has not certified any ballot printers. When voting systems vendor communications may have implied local boards were obliged to purchase ballots from vendor-certified printers, the State Board and OGS immediately informed local boards that they are not obligated to purchase from voting system vendor certified printers. A sample of these communications are attached as Exhibit "C".

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|-------------------|
| * Comment 1 |
|-------------------|

Of course a local board is entitled to give weight to a printer's status as a voting system vendor-certified printer in the bid specification and procurement processes because of what such certification means (i.e., proven machine-read capability, and overall peace of mind because of such print vendor's proven track record in error-free ballot production, etc.). Voting system vendor certification of a printer attests that the ballots printed by a printer have been tested for reliability against the vendor's printing specifications and reliability standards.³

State Board Will Continue To Inform Local Boards

The State Board will provide further guidance to local boards on the subject of ballot production and procurement. Among other things, the State Board will provide county boards with the cost comparison findings of the Comptroller's report, and recommend local boards carefully examine their processes for entering into procurement contracts and continue to explain the various legal methods of procurement (competitive bidding, "piggybacking," state contract, etc.).

voting machines and equipment included ballots. Boards were informed they were not obligated to purchase ballots from these contracts and were free to use their local procurement processes.

³ The federal Election Assistance Commission recommends "[i]f possible, use a printer that has been certified by your voting system vendor. If this is not possible, be sure that the printer is able to meet your voting vendor's specifications." *Election Management Guidelines* p. 43.

*See State Comptroller's Comments, page 21.

DETERMINING BALLOT QUANTITIES

The State Board has provided ballot quantity guidance to local boards of elections in direct communications with inquiring local commissioners and staff and through discussions at conferences of the New York State Election Commissioner's Association (ECA). This topic has been widely discussed, has been a subject of workshops at ECA conferences and has been studied extensively by the State Board, including consultation with other boards of elections outside of the State of New York, on the topic of ballot production and usage.

Ballot Quantity Factors

In an ideal world, each of New York's over 15,000 election districts would have exactly the number of ballots needed for each election—and no ballot would be left over, to be discarded. It is impossible, however, to predict with perfect accuracy the number of voters who will exercise their right to vote at each election, especially since such predictions must consider the more granular building blocks of elections – election districts and poll sites, and not simply overall 'election turnout'.

The fundamental concern in printing ballots must be to always have enough because printing too few ballots leads to voter disenfranchisement which is unacceptable.

Local boards of election must consider:

- * historical voter turnout figures for the relevant type of elections
- * public interest and intensity surrounding an election
- * ballot complexity and other factors that may lead to spoilage⁴
- * replacement time for providing additional ballots, weighing issues such as how far the board's office is from poll sites and the number of voters potentially disenfranchised while waiting for additional ballots

When a local board runs out of ballots, replacement ballots are typically photocopied ballots on plain paper which would need to be hand-canvassed, as they could not be read by the voting machines. Only those boards that print their own ballots (assuming they have capacity) or those in proximity to their printers can quickly obtain additional scannable ballots. Clearly, this is another reason local boards zealously seek to avoid short supplies of official ballots.

The State Board never informed the audit team that we were unable to develop a single formula which boards could use to estimate ballots to be ordered because of "the different procurement practices". The number of ballots to be ordered has nothing

⁴ A voter is entitled to a replacement ballot if the initial ballot is "spoiled" by improper marking.

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| <p>* Comment 2</p> |
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to do with procurement practices and everything to do with the assessment by the local board of commissioners of historical data, local interest in each election and media coverage.

Analysis of Comptroller's Formula for Calculating Ballot Quantity Overages

While well intended, the premise of the ballot cost savings in the draft report is incorrect. Printing 110% of the recent historical average for an election of a particular type (presidential, gubernatorial, local, etc.) is insufficient and would inevitably, in the course of time, lead to widespread ballot shortages and disenfranchisement.

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Comment
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In Bridgeport Connecticut in 2010, the local board of elections printed 21,000 ballots—a number derived after considering the last three election turnouts. Indeed, the board printed nearly 1,000 more ballots than were cast in the preceding gubernatorial election. Owing to a robust turnout some commentators attributed to close election contests and a pre-election campaign stop by the President, 25,700 voters turned out. Ballot shortages were endemic. Voters who could not wait for more ballots to be delivered left poll sites, and an emergency court order was issued, extending voting by two hours in an effort to remedy the long periods poll sites were idled for lack of ballots. A former state senator commented as the “chaos” was unfolding, “[i]f I were in office, I’d be drafting a bill tomorrow requiring all towns to order enough ballots to cover the number of registered voters.” The Connecticut Secretary of State indicated that was in fact the advice given by her office⁵.

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Comment
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Notably, in the 2010 gubernatorial election, turnout in Bridgeport exceeded the previous gubernatorial turnout by 27.6%. Had Bridgeport printed 110% of the historical average, as suggested by the Comptroller’s report, it is nearly certain they would have run out of ballots.

A more disturbing example of the inadequacy of a 110% of historical turnout printing standard comes from an analysis of what would have happened if this standard were applied in past elections. In examining the eight gubernatorial elections since 1986, the statewide turnout ranges from a low of 3,930,310 in 2014 to a high of 5,325,323 in 1994. That is a variation of 35.5% from high to low, measured as a percentage of the low. In 1994, if election officials had been printing paper ballots and used 110% of the average of the preceding two gubernatorial elections as the number to print, the statewide ballot shortage would have exceeded 700,000 ballots.

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Local election commissioners are deeply committed to reducing waste and saving money. The financial pressures on local boards are considerable. Despite these pressures, local boards understand they cannot prepare for the “likely” election turnout scenario; rather they must prepare for the highest potential turnout scenario objectively imaginable. This task is not easy, and neither they nor the State Board, should be

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⁵ CTpost.com, “BRIDGEPORT ‘CHAOS’: 21,000 ballots readied for 69,000 registered voters” (November 3, 2010); CTpost.com, “Mayor Finch rips registrar’s office for ballot shortage” (November 3, 2010)

criticized for having printed more than enough ballots. The scenario of running out of ballots negatively impacts voters, candidates, poll workers and boards of elections and government as a whole.

In 2010, a Bridgeport voter who waited an hour and a half for his ballot to arrive expressed "[s]omething doesn't smell right. Either somebody didn't do their job or this is an example of dirty politics." The erosion of public confidence evidenced by this voter's observation must be avoided.

The State Board will not advise local boards to print ballots based on 110% of historical turnout for similar elections. The State Board will continue to study this issue and provide guidance to local boards on the art and science of selecting ballot quantities.

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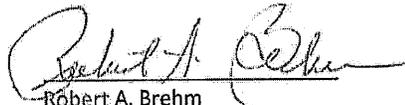
COMMUNICATION WITH LOCAL BOARDS

The State Board of Elections embraces fully the Comptroller's recommendation to communicate with local boards of elections. Monthly the State Board joins in a conference call to which every local commissioner is invited to participate. The State Board is represented on these calls by its Co-Executive Directors, Director of Operations, Public Information officials as well as campaign finance compliance and counsel staff. In addition to the State Board providing updates and guidance, there is an opportunity for local boards to ask any question they may have. The State Board routinely updates local boards by email, by providing documents through an on-line library, and through participation in training conferences hosted by the ECA.

CONCLUSION

The State Board will continue to work with local boards of elections to ensure competitive ballot procurement, reliable ballot quantity calculation issues and open communication.

Sincerely,



Robert A. Brehm
Co-Executive Director



Todd D. Valentine
Co-Executive Director

RAB/TDV/dsm
Encs.

State Comptroller's Comments

1. As noted in our report, some Local Election Board officials told us that they were informed by OGS that certain vendors were certified to print ballots for particular voting machines. As such, local officials may have assumed that ballots could only be purchased from the certified vendors, and therefore, they did not explore other available options for acquiring ballots. Among several related issues, this illustrates why we recommend the State Board provide the localities with additional guidance pertaining to ballot procurement.
2. We acknowledge the distinction between determining the numbers of ballots to acquire and the procedures used to purchase ballots. Moreover, State Board officials did advise us that it would be difficult to issue one set of guidance for all of New York's Local Election Boards because of the unique circumstances that can exist among the State's many election districts. We amended our report to better clarify the State Board's perspective on the matter.
3. To the contrary, the main premise of our report is correct. Localities statewide could save material ballot procurement costs by better estimating the number of ballots actually needed and by using competitive processes to purchase ballots. Moreover, our report does not recommend that the State Board or local election boards base the amount of ballots needed on 110 percent (or any other percentage) of recent average voter turnout. The percentage (110) auditors used was for illustrative purposes only, to provide some indication of the costs that could potentially be saved. Also, we acknowledge that State and local officials should adjust estimates of ballot needs based on unique circumstances that could impact voter turnout for a particular election.
4. We acknowledge that the Bridgeport ballot shortage was problematic. However, as the State Board notes, voter turnout was amplified by unusual circumstances (including a campaign stop by the President of the United States). Given this circumstance, elections officials should have better estimated the magnitude of the increases in voter turnout.
5. We acknowledge that there have been and likely will be fluctuations (and perhaps aberrations) in voter turnout, particularly over long periods of time, including multiple decades. Further, such fluctuations can sometimes be significant. As such, despite the various methods employed by elections officials (and their best efforts) to project the amounts of ballots needed, there will always be some risk (albeit very small) that voter turnout exceeds the amounts of ballots acquired. Moreover, this further illustrates why elections officials should better use historic data to more formally project the amounts of ballots needed, thereby helping to minimize the risks of acquiring too few ballots as well as incurring excessive amounts of unnecessary costs for unused ballots. As noted in the report, about 62 percent of the ballots purchased by the localities were unused. Also, see Comment No. 3.
6. We question the propriety of routinely preparing for the highest potential turnout objectively imaginable. Such an approach could tend to diminish rational and formal assessments of risk and lead to excessive amounts of unnecessary costs. Given the existing strains on State and local government budgets, we question whether officials should routinely allocate limited public funds based on highest imaginable needs.
7. As noted previously, our report does not recommend that the State Board advise local

boards to print or acquire ballots based on 110 percent of historical voter turnout. Further, we are pleased that the State Board will continue to study this issue and provide guidance to local boards on projecting the amounts of ballots needed.