

Community - FY2

THE COUNCIL OF THE CITY OF NEW YORK

Finance Division



Hearing
on the Fiscal 2010 Executive Budget
for the
Board of Elections

May 18, 2009

Hon. Christine C. Quinn
Speaker

Hon. David I. Weprin
Chair, Committee on Finance

Hon. Helen Sears
Chair, Committee on Governmental
Operations

Preston Niblack
Director

Jeffrey Rodus
First Deputy Director

Andy Grossman
Deputy Director

Board of Elections (003)

Agency Overview

The Board of Elections (The Board or BOE) conducts, as specified by State Law, all elections within the City of New York. The Board has a central office and five borough offices. The Board receives and examines candidates' petitions, registers voters either by mail or on specified registration days, and keeps current the City's voter registration lists. The Board holds and keeps minutes of all of the Commissioners' meetings on the Board of Elections.

Agency Highlights

- **Help America Vote Act of 2002 (HAVA).** The Help America Vote Act (HAVA) calls for the modernization and improved administration of elections. HAVA has many components, such as creating a statewide computerized, interactive voter registration list, providing accessible voting machines at each poll site and offering financial incentives to states that modernize their voting systems.

All HAVA-participating states were required to comply with the law by the November 2004 general election. However, since New York received a one-time compliance waiver from the Federal government, the deadline for full HAVA compliance was extended until the September 2006 primary election.

In February of 2006, the Department of Justice (DOJ) sued New York State for its failure to comply with HAVA. On June 2, 2006, as part of the settlement of the HAVA lawsuit, the United States District Court for the Northern District of New York (Court) issued a Remedial Order (order) accepting the New York State Board of Elections (State Board) plan for partial HAVA compliance for the 2006 election cycle, and setting forth future deadlines for full HAVA compliance.

Specifically, the Court required the State Board to present a plan to the Court by September 28, 2007, for placing one fully accessible voting system in every poll site statewide. Since the State Board of Commissioners was unable to develop a plan that a majority of the Commissioners would approve, the State Board submitted two plans to the Court. Subsequently, on November 5, 2007, DOJ moved for an order requiring the State to take immediate and specific steps to become compliant with the order and HAVA. More importantly, DOJ effectively moved for the appointment of a receiver to achieve HAVA compliance if the Court decided that the State was unable to comply with the requirements of the Order and HAVA on its own. Finally, on January 16, 2008, the Court issued a Supplemental Remedial Order (Supplemental Order), which among other things required the State Board to deploy a Ballot Marking Device (BMD) in every polling place throughout the State and replace all lever voting machines by the fall 2009 primary and general elections.

The Council urges the State to ensure that the State Board is taking all necessary steps to fully implement HAVA according to the terms outlined by the Court in the Supplemental Order. In particular, the State Board must comply with all Court ordered implementation deadlines to ensure that local Boards of Election are able to take the necessary steps to implement permanent voting systems for 2009 and beyond. The State must also ensure that all state and local Board of Elections

staff, including poll workers, will be sufficiently prepared to educate and assist voters as the State replaces its lever machines with new, sophisticated voting technology. More specifically, the State must ensure that local Boards of Elections have State-certified voting machines from which to choose so that the new machines may be properly deployed in 2009.

Although the City Board of Elections has conducted voting machine demonstrations and held a public hearing to allow comment from the public, at present the prospect of meeting the court-ordered implementation of new voting machines by the September 2009 election is dubious. As of early March, the State Board of Elections still had not certified any machines, making it impossible for any local board to select, procure and test them. Similarly delayed is the required training for voting machine technicians and poll workers, as well as necessary public education efforts. The Board's executive staff is highly concerned that due to circumstances clearly beyond its control, the agency will be out of compliance with the mandates of the Department of Justice, the federal courts, or both. According to the City Board, these entities are aware of these compliance issues (but oddly silent on them) since the State Board of Elections is mandated to submit weekly status reports to them.

City Council Legislative Agenda Items

- **Full-Face Ballot Requirements.** The New York City Council urges the State Legislature to amend State Election Law Section 7-104, to better enable counties to comply with HAVA. Particularly problematic is the State's current requirement that an entire ballot must appear on one page, also known as a full-face ballot.

Modern, user-friendly voting systems are simply not consistent with the full-face ballot requirement. Further, many of the voting system vendors currently under consideration by the State Board of Elections are not manufacturing voting systems with the full-face ballot specifications. Therefore, unless the election law is amended, there is a strong possibility that the equipment procured in New York State will be more expensive and less rigorously tested than voting systems used by other jurisdictions throughout the country.

Keeping the full-face ballot requirement may also hamper efforts to provide the level of access for persons with disabilities that HAVA requires. Specifically, since requirements dictate the ballot be displayed on one screen, it is probable that the font used will be so small that visually impaired voters may have difficulty casting their votes independently and in a meaningful manner. Finally, the full-face ballot requirement may present problems with the number of alternative languages that the ballot must be translated into, an especially troublesome factor in New York City where the City Board of Elections is legally required to translate the ballot in at least four languages.

- **Electronic Voter Registration.** The New York City Council calls on the State Legislature to amend State Election Law Section 5-210, to permit electronic voter registration. Currently, in order for a voter's registration to become effective, a potential voter must complete a voter registration form and either mail it to a local Board of Elections or return it to a local Board office in person. In New York City, for example, many local agencies, such as the Department of Motor Vehicles, are permitted to distribute voter registration forms, although the voter remains responsible for mailing in or returning the form to the local Board. The Council urges the State to consider permitting voter registration via the Internet.

- **Election Day Registration.** The New York City Council calls upon the State Legislature to enact legislation to allow voter registration at any time up to, and including, Election Day. Currently, State law requires potential voters to register at least twenty-five days before an election to be eligible to participate in that election. This requirement often has the effect of preventing otherwise qualified individuals from casting a ballot. Election Day Registration would increase citizen participation in the electoral process, a longstanding goal of the Council.
- **Early Voting and No-Excuse Absentee Voting.** The New York City Council calls upon the State Legislature to enact legislation allowing early voting and no-excuse absentee balloting. Early voting is the process by which voters can cast their vote prior to Election Day. Early voting can take place remotely, such as by mail, or in person, usually in designated early voting polling stations. The availability and time periods for early voting vary based on jurisdiction and type of election. Similarly, no-excuse absentee balloting allows any registered voter to vote absentee in advance of Election Day without having to state a reason for their need or desire to vote via an absentee ballot. Voters in jurisdictions utilizing no-excuse absentee balloting enjoy many of the benefits of more traditional early voting at a reduced cost and with less of a pre-election day administrative burden. Generally speaking, the goal of early voting and no-excuse absentee balloting is to increase democratic participation and relieve congestion at polling stations on Election Day, while also allowing those scheduled to be away from their state or district for work, family-related business, or other reasons to cast a ballot.

Other Issues

- **Pay Equity.** For several years, the BOE has been advocating for an increase in the salaries of its employees. Several years ago, the Board conducted a study showing that when compared to the salaries of the surrounding county Boards and those of the City's Campaign Finance Board, New York City BOE employees' salaries were among the lowest overall. The Board has sought a baseline addition of \$7 million to properly fund its salary costs. According to the Board, this is particularly vital given the substantial increase in required job expertise and training associated with election modernization and the Help America Vote Act.
- **Capital Budget Funding.** The federal government appropriated HAVA funds to states to modernize their voting systems. That act made available \$220 million to the State of New York; New York City is expecting to get approximately \$92 million of the total funding. Of this amount, the City has already accessed approximately \$23 million for the purchase of ballot marketing devices, leaving approximately \$69 million. Sensing that this sum may be insufficient, the Mayor's Office of Management and Budget (OMB) has budgeted an additional \$50 million in City tax-levy funds for the purchase of new voting machines. HAVA requires at least one machine per election district (ED); when an ED's population is more than 800, the ED must have more than one machine. The City has 6,111 election districts, many of which require additional machines. The City Council will be monitoring the sufficiency of Capital funds that will be required to purchase new voting machine systems.

The City's Capital Budget also includes an additional sum of \$47.2 million for other purposes, including the outfitting of office and warehouse space.

Expense Budget Overview

Fiscal 2009

The Mayor's Fiscal 2009 Preliminary and Executive Plans included a combined \$6.5 million across-the-board PS and OTPS budget reduction, but did roll over \$8.12 million in HAVA funds from Fiscal Year 2008. While there were significant concerns on the part of the Board of Elections regarding the cuts, especially in light of the Board's requests for new needs funding that went unmet, the 2008 elections, including the high-volume November Presidential Election, were conducted without major incident. The Board reports that such a performance was only made possible through round-the-clock efforts, much of which were performed on overtime.

The agency now reports a structural deficit in Fiscal 2009 of approximately \$7 million, approximately the same amount as the PEGs imposed on the agency (\$6.5 million). The largest portion of this deficit stems from Personal Services over-spending. The Board has indicated that OMB's own data showed that PS spending through February 20, 2009 (\$18,721,800) is more than \$5 million above the budget projection of \$13,635,500. Whereas OMB funded in the Executive Plan the discrete costs associated with the special election for Bronx Borough President, it did not provide new need funding to cover the aforementioned multi-million dollar deficit. Rather, OMB reports, the agency will close its accounting for Fiscal 2009 in a deficit condition. The stated rationale for this unusual maneuver is OMB's sense that the special election brought about unfunded costs beyond the agency's means, while the agency's baseline funding was sufficient to run last Fall's elections.

As of the January Plan, the Board's current-year (Fiscal 2009) budget was impacted by its unfunded requirements to run several special elections, including those for vacant City Council positions and the recently-vacated Bronx Borough President position. Whereas the Board estimated that the Council special elections cost just over \$1 million, while the borough president election was likely to cost just under \$3 million, the Executive Plan included \$2.5 million to fund the borough president special election.

Fiscal 2010

The January Plan included another substantial PEG for the BOE that would lower the agency's operating budget by more than \$5 million per year beginning in Fiscal 2010. As Fiscal 2010 will include citywide elections (that may include one or more run-off elections) and the possible introduction of new voting machine systems, it remains to be seen whether the agency's proposed Expense Budget of \$86.2 million will be sufficient, though this sum does include a rollover of \$14.9 million in surplus HAVA funds from Fiscal 2009.

	2008 Actual Expenses	2009 Adopted Budget	2010 Preliminary Budget	2010 Executive Budget
Spending				
Personal Services	\$24,714,455	\$19,800,036	\$17,543,014	\$17,543,014
Other than Personal Services	\$55,961,752	\$69,365,767	\$54,305,722	\$68,675,379
Total	\$80,676,207	\$89,165,803	\$71,848,736	\$86,218,393
Funding				
City	NA	\$89,165,803	\$71,848,736	\$86,218,393
Total	NA	\$89,165,803	\$71,848,736	\$86,218,393
Headcount				
Full-time Positions	336	319	319	319

Executive Budget Overview

November and January Plan

Personal Services

- **Across-the-Board PS Reduction.** The January Plan contained a single \$5.4-million PEG for the Board, split between PS and OTPS units of appropriation. The value of the PS portion is approximately \$2.4 million in Fiscal 2010 and \$2.5 million in Fiscal 2011 and the outyears.
- **Fringe Offset Reduction.** In order to give the agency PEG credit, the PEG action described above includes fringe benefit savings that should be properly accounted for not in BOE's budget, but in the City's Miscellaneous Budget. To reflect the neutral impact on BOE's budget that would result from these fringe benefit savings, an offsetting sum totaling \$106,626 in Fiscal 2010 increasing to \$273,540 in Fiscal 2013 is being added back to the BOE's budget as an adjustment.

Other Than Personal Services

- **Across-the-Board OTPS Reduction.** The January Plan contained a single \$5.4 PEG for the Board, split between PS and OTPS units of appropriation. The value of the OTPS portion is approximately \$3 million in Fiscal 2010 and \$2.9 million in Fiscal 2011 and the outyears.
- **Poll Site Access Improvement.** The November Plan included one-time funding of \$208,000 in Fiscal 2009 for poll site access improvement.

Executive Plan

- **Rollover of Surplus Fiscal 2009 HAVA Funding.** The Executive Plan rolls over from Fiscal 2009 to Fiscal 2010 the sum of \$14.9 million in surplus HAVA funding.
- **Bronx Borough President Special Election.** The Executive Plan includes one-time funding of \$2.5 million to fund costs associated with the special election for Bronx Borough President. No specific new needs funding was included to cover the Fiscal 2009 costs of City Council special elections.
- **Surplus Funding for Leases.** The Executive Plan removes approximately \$2.9 million in surplus lease funding from the Board's baseline budget beginning in Fiscal 2010.

PS and OTPS – Units of Appropriation 001 & 002

	2008 Actual Expenses	2009 Adopted Budget	2010 Preliminary Budget	2010 Executive Budget
Spending				
001 – Personal Services	\$24,714,455	\$19,800,036	\$17,543,014	\$17,543,014
002 – OTPS	\$55,961,752	\$69,365,767	\$54,305,722	\$68,675,379
Total	\$80,676,207	\$89,165,803	\$71,848,736	\$86,218,393
Funding				
City	NA	\$89,165,803	\$71,848,736	\$86,218,393
Total	NA	\$89,165,803	\$71,848,736	\$86,218,393
Headcount				
Full-time Positions	336	319	319	319