

## **INTRODUCTION**

The State of New York remains fully committed to full compliance with Section 301 of HAVA. New York is equally committed to ensure that we replace a working voting system with one that will be in full compliance with federal VVSG standards. In our commitment to fully replace lever machines in New York, we seek voting systems that are better than our existing system, and that do not deprive New Yorkers of their constitutional rights as voters.

It is critical to the New York State Board of Elections (SBOE) that any voting system intended for use in New York State be rigorously and thoroughly tested to ensure compliance with federal VVSG standards. It is projected that the current certification process will be concluded in December of 2009 (a copy of the timeline is attached). As that current certification process continues, it is critical that elections that take place in this State utilize secure and accurate voting equipment.

After a great deal of internal discussion and consultation with county boards of elections, the SBOE has concluded that there is a great deal of value that can be gained from the experience of a secure and controlled pilot program.

## **PROPOSED PLAN FOR A 2009 PILOT PROGRAM**

This document sets forth a proposal by the State Board of Elections to the Department of Justice regarding the deployment of optical scan voting systems (OpScan) for the September 2009 primary and general elections. It is the intention of the State Board of Elections to allow Op Scan devices to be deployed and utilized as widely as they can be based upon the local boards of elections' capability to train on and use them effectively.

In addition, this document clarifies the schedule committed to for full machine deployment in 2010. The SBOE will immediately notify the Department of Justice should there be *any* deviation from any part of this proposed plan.

## **PRE ELECTION FUNCTIONAL TESTING AND ACCEPTANCE TESTING**

The State Board will conduct functional testing of the vendor units prior to their deployment. This functional testing will validate the logic and accuracy of the systems, which will ultimately allow for less restrictive post-election procedures to be implemented. This will also be accomplished through testing by SysTest as part of the formal certification process.

In addition, the State Board will perform acceptance testing on all new voting equipment prior to its use. To this end, the State Board will create an enhanced acceptance testing procedure for all newly-delivered devices. Any new Sequoia/Dominion units that are to be deployed and all of the ES&S scanners will be required to go through this enhanced acceptance testing procedure prior to being dispatched to the counties for use. The enhanced acceptance testing will consist of a process developed by SBOE staff and NYSTEC and will be conducted at a central location in

Albany. The staffs are currently in the process of developing these procedures. The acceptance testing procedures have been finalized.

The counties have requested that the tabulation function of the voting systems be activated as soon as possible so that they may begin training on the “actual systems” that the poll workers will see on Election Day. The vendors have started to enable these tabulating functions or provide counties with scanners for testing purposes. Both vendors assured the State Board that they will finish the provision of “working machines” by May 30, 2009. This will give the counties adequate time to train their personnel.

### **UPGRADING OF MACHINES CURRENTLY IN THE CUSTODY OF THE COUNTIES**

The Board must ensure that all units that are going to be used in this pilot program are loaded with identical software versions. After lengthy discussions with the Sequoia/Dominion vendor it has been tentatively agreed that this upgrade would be most efficiently done at a central location. The vendor has agreed to go to the counties involved in the pilot program, box up their voting systems and ship them to the central location. At that location, the upgrade would be made to the voting system by the vendor. The vendor will then box up the voting system again and send the machine back to the county of origin. At that point, the county board will perform receipt process tasks as outlined in the procedure manual, making the units ready for use. All of this will be done at no cost to the counties.

It has been determined that this process will take place in two phases. The first phase will consist of those machines that will be utilized in the pilot program and a finite number of spare machines. This first phase of the updating process for the pilot voting systems will be completed by July 15, 2009 which is a sufficient time frame to allow the counties to run pre-election tests that are necessary to confirm readiness for the September primary election. Phase two of this process will be upgrading the balance of the Sequoia/Dominion machines currently deployed throughout the State. This will be completed no later than July 30, 2009.

The Board also has had similar discussions with ES&S. While this vendor has a significantly smaller number of counties it has different logistical issues in that the scanners that will be utilized have not been tested at all and are currently not in the possession of the counties. ES&S has assured the State Board that they can meet the same deadlines as outlined above for Sequoia/Dominion and that we will have all of the scanners that are needed for the pilot counties in possession of those counties by July 15, 2009.

### **POST ELECTION VERIFICATION**

The Board will also provide for a Post Election Audit System to verify the election results. While these processes are still being discussed by the SBOE staff and the Commissioners, it is anticipated that the counties' required audit requirements will be as follows:

- Full compliance with the audit provisions contained in Election Law §9-211 and the audit provisions contained in the proposed regulation 6210.18.
- Conduct a 100% hand audit of all ballots in election districts when the difference in the result of the election between the potential winning and losing candidates in any contested election on the ballots is 1% or less AND,
- Randomly select 3 % from all the devices used in each county, or, borough within NYC, and hand audit all of the ballots tabulated by that device. If the outcome does not match the canvass report, then a 100% hand audit is to be conducted.

## **PARAMETERS OF THE PILOT PROGRAM**

As previously indicated, it is the SBOE's intention to encourage and allow Op Scan devices to be deployed, in the pilot program, as widely throughout the State as they can be, based upon the availability from the manufacturer and capability of each local board of elections to use them.

In keeping with this intention, in SBOE has required the local boards to identify to the State Board both their intention to participate and in what portion of their county it will be using the OpScan voting system. In addition to any other requirements that are developed, the SBOE is requiring that:

- The pilot area is comprised of distinct polling places so that all of the voters within that polling place cast their vote on the same voting system. This will ensure that training and outreach efforts are consistent and focused.
- If the poll site serves multiple election districts, the all of the voters in that poll site will be included in the pilot.
- In a pilot district all voters will be voting on scanners or BMDs. *No lever machines* will be deployed in the pilot districts.

## **PARTICIPATION IN THE PILOT PROGRAM**

SBOE has been clear that participation is expected in both the primary and the general elections of 2009. In addition, SBOE has clearly stated that an *increased* participation from the primary election to the general election is encouraged and will be authorized.

A chart setting forth the various counties' level of participation in the pilot is attached. In addition, the DOJ has been previously provided with the individual county participation documents provided by the counties to SBOE.

## **Projection for Full Machine Deployment**

As set forth in the attached timeline, the certification testing process will be completed by mid-December of 2009. The conclusion of the SBOE certification project includes the completion of testing by SysTest, any reviews required by NYSTEC, the issuance of testing reports, and a vote on certification by the Board at a meeting to be held no later than December 15, 2009.

All of the machines needed by the counties for a full 2010 deployment will be in the possession of the counties by March 15, 2010. By way of explanation, prior to full certification in December of 2009, SBOE is projecting that the vast majority of new machines will be ordered by the counties by May 30, 2009. Upon final contract "sign-off" by the NYS Comptroller's office (which we are expecting will occur on or before May 29, 2009), these requisitions will be converted almost immediately to actual purchase orders prior to the actual certification of the voting systems. Both vendors have indicated that they will only rely on purchase orders for building and shipping purposes. In furtherance of this process moving as quickly as possible, Board staff have had numerous conversations with the staff at OGS and with the vendors. SBOE has urgently and repeatedly stressed to all involved that everything and anything that can be done to move this process forward, should be undertaken. In addition, Board staff drafted a resolution that was taken up and voted on at our May 12, 2009 Board meeting, by which the Board awarded the required interim authorization for use of these systems.

Assuming final sign-off by OSC by May 29, 2009, it is anticipated that full acceptance testing of the new Sequoia devices can begin August 10, 2009 and will conclude no later than December 23, 2009. Should Sequoia/Dominion be chosen as the vendor for NYC, they have committed to SBOE that they can build enough machines in a timely fashion so that they will be acceptance tested and delivered to NYC no later than December 31, 2009.

ES&S staff has indicated to SBOE that they currently have enough units to fully deploy units for this conversion in all four of their counties outside of NYC. Acceptance testing can thus begin within 2 weeks of having the purchase orders issued. As such, it is anticipated that the ES&S machines for those counties outside of NYC will be acceptance-tested and deployed no later than July 30, 2009. Should ES&S be chosen as the vendor for NYC, they have committed to SBOE that they can build enough machines in a timely fashion so that they will be acceptance tested and delivered to NYC no later than November 30, 2009.

## **CONCLUSION**

In summary, while the SBOE remains strongly committed to the full certification process, we believe that the Pilot program as outlined above will provide both the State and the counties with an invaluable learning tool as we finalize certification and full deployment in 2010. In addition, SBOE is committed to full certification and delivery as indicated in this document and the accompanying documents.