

Preparing To Introduce New Voting Machines In The City Of New York

A Report From The Mayor's Election Modernization Task Force

July 1, 2005

Contents

Introduction	3
Preface	4
Background	5
The Election Reform And Modernization Act of 2005	
Scope Of The Project To Implement New Voting Machines	
Efforts Undertaken By The Board Of Elections To Prefer For New Voting Machines	
Recommendations	12
Develop A Detailed Project Plan	
Acquire External Assistance From An Expert Consultant And City Agencies	
Solicit Public Input	
Be Ready To Purchase New Machines When The State Board of Elections Completes Its Work	
Conclusion	18

Introduction

The forthcoming selection of new voting machines by the Board of Elections in the City of New York (“Board”) will not only cost the City millions of dollars but will change the way the City runs its elections for the foreseeable future. The State Legislature has finally enacted -- after an unfortunate more than two year delay -- the New York State “Election Reform and Modernization Act of 2005” (“ERMA”),¹ which implements the voting machine component of the federal “Help America Vote Act” (“HAVA”). ERMA has finally established how new machines will be purchased and the method of allocating to localities federal assistance received under HAVA. Although the City still needs the State Board of Elections to complete several important functions with which it is charged -- including certifying new voting machines and entering into State contracts on which local boards of elections may purchase machines -- the City Board must now simultaneously prepare the administrative groundwork so that it may meet the rapidly approaching federal and State deadlines.

Unfortunately, the Board is not yet ready to implement this project and risks either further delay or a mismanaged process that could lead to chaos at the polls and a waste of City resources. To avert such an outcome, it is imperative that the Board immediately:

1. Develop a detailed project plan containing a timeline for each task -- including selecting the type of machine to purchase, choosing the manufacturer from which to purchase, developing and evaluating needed specifications for the City’s machines, making needed changes to warehouse and transportation arrangements, conducting poll site modifications, revising poll worker recruitment and training programs, holding a public education campaign, etc. -- so that the project can be managed effectively;

¹ New York State Legislative Bill S. 5877 (passed both houses June 23, 2005). The bill is awaiting the Governor’s signature.

2. Retain no later than the end of August, a consultant with expertise in this area to work with the Board's staff on a day-to-day basis on all aspects of the project;
3. Work with City agencies, such as the Department of Information Technology and Telecommunications ("DoITT"), the Department of Citywide Administrative Services ("DCAS"), the Mayor's Office of Contract Services ("MOCS"), and the Law Department, that have experience in complicated projects and procurements;
4. Continue to inform the public about its progress in implementing the new voting machine project and solicit input from the public on the type of voting machines the City should purchase;
5. Be fully prepared to purchase new machines as soon as the State Board of Elections completes the certification and State contracting processes.
6. Be fully prepared to implement the needed poll worker and voter training programs that are necessary to ensure that poll workers and voters understand how to use the new machines, along with the scores of other tasks that will be required once a decision has been made on the type of machine to be purchased.

Preface²

With its excessive delay, the State has placed the City and other counties in the position that they will miss federal deadlines for replacing voting machines. This could require the State to return a portion of the approximately \$50 million in federal HAVA assistance it has received specifically to replace its obsolete lever voting machines and thus potentially cost the City over \$18 million in lost federal funding. This is a deplorable situation, but the Board must nevertheless meet its obligations to the voters.

² This is the second of a series of reports issued by the Election Modernization Task Force. The Task Force has been charged by Mayor Michael R. Bloomberg to develop recommendations to improve the system of elections in the City of New York. Our first report, "The Urgent Need For State Voting Machine/HAVA Legislation," was issued on March 18 and called for the State Legislature to pass legislation immediately that would allow the State and City to access federal funding to replace the City's outdated voting machines and improve the administration of elections. The State Legislature finally passed such legislation on June 23, 2005.

In a March 18, 2005, report entitled, “The Urgent Need For State Voting Machine/HAVA Legislation,” the Mayor’s Election Modernization Task Force outlined the numerous tasks that the Board of Elections will need to complete in order to successfully introduce a new voting system. These range from purchasing new voting machines and upgrading warehousing space to training 30,000 poll workers and educating millions of the City’s voters on how to use the new machines. The entire project is one of monumental proportions, and the selection of new voting machines, which is the centerpiece, is but one of many tasks that the Board must accomplish simultaneously. In addition, according to federal and State mandates, almost all of this work must be completed in time for the first federal elections in 2006 (*i.e.*, the September 2006 primary election). The Board has never confronted a project of this magnitude and complexity, and we believe that without additional outside help, it will not be able to meet the very short deadlines.

Although the Board generally recognizes the scope of the project and has taken some steps to prepare, the Board must now rapidly increase its efforts. This project is very complicated, requiring numerous steps to be conducted at the same time, and many of its aspects are highly technical. Moreover, although the total cost of the project is still unclear, it is clear that the City will be required to spend millions of dollars out of its own budget, because the City’s share of federal HAVA assistance will not cover all the costs to purchase new machines and carry out related implementation tasks. The Board had already requested almost \$14 million in funding from the City to implement several aspects of the project, including voter education and upgrading warehouses. Depending on the model of voting machine selected, the additional costs to the City will rise exponentially.

While the Board has other responsibilities over the coming year, including running the 2005 municipal elections, it must make this new voting machine project its top priority. The Board must also catch-up on preparations that it could have been doing while the State Legislature dithered.

Background

From its first meeting, the Task Force has examined the process for implementing new voting machines, including understanding the legal background and identifying the immense challenges facing the Board. We have had numerous meetings with several of the Commissioners of Elections and the Board's senior staff. In addition, the Task Force held a public forum on May 5, 2005, to solicit public input on the various issues facing the Board, including the new voting machine issue. We have also met several times with Gino Menchini, the Commissioner of DoITT, to discuss the scope of this project.

The primary focus of the Task Force until this point has been to advocate forcefully for the State Legislature to pass the necessary legislation to implement HAVA and provide the City with its fair share of the State's allocation of federal HAVA funds. In pursuit of this goal, the Task Force issued its March 18 report and held two press conferences, one of which was co-sponsored by a number of civic groups. In addition, the Chair of the Task Force had numerous discussions with key legislators, their staff, and the Governor's Office to underscore that the State's inaction could lead to a disaster in the City during the 2006 elections and to suggest that the legislation include specific provisions endorsed by the Task Force. Although we are pleased that the legislation ultimately passed by the Legislature contains a number of our recommendations, it is very disappointing that the amount of time it took the

Legislature to complete its work has brought the State and City far too close to the impending federal and State deadlines.

The Election Reform and Modernization Act of 2005

On June 23, 2005, the penultimate day of its regular session, the State Legislature finally passed ERMA; and the Governor is expected to sign it shortly. ERMA is the final piece of a package of bills the State Legislature passed on the last days of the session to implement HAVA, 42 U.S.C. § 15301 *et seq.* HAVA, which was enacted in October 2002, establishes basic guidelines for voting machines used in federal elections, imposes requirements for other aspects of election administration, and provides federal funds to states to replace outdated voting machines and to meet new federal standards. New York State has consistently lagged far behind the rest of the country in implementing HAVA, and was the last State to qualify for the full amount of its approximately \$220 million share of federal HAVA assistance.

ERMA delegates most of the tasks of implementing HAVA to the local boards of elections, and most significantly, does not prescribe a uniform voting machine for the State. Instead, local boards of elections are required to pick a machine that has been certified by the State Board of Elections as complying with State and federal law.³ The State Board of Elections must therefore work rapidly to certify machines so that this process does not become further delayed. In addition, ERMA requires local boards of elections to have for the first federal election in 2006 (*i.e.*, the September 2006 primary) at least one voting machine at each polling place that is accessible to individuals with disabilities pursuant to the requirements of HAVA and

³ See ERMA § 12.

special guidelines established in ERMA. ERMA mandates that all lever voting machines must be replaced by September 1, 2007.⁴

ERMA provides that \$190 million of the State's \$220 million share of federal HAVA funds will be allocated to the local boards of elections according to the county's (or the City of New York's) percentage of registered voters on December 31, 2004. Since New York City had approximately 38 percent of the registered voters in the State as of November 1, 2004, it therefore should receive approximately \$72 million.⁵ This is apparently the only funding the City will receive from the State and federal government to purchase voting machines, train poll workers, and educate the voting public. Importantly, the State may be forced to return a portion of the HAVA funds for each precinct that does not replace all of its lever voting machines by the September 2006 primary.⁶ Depending on the ability of the City and other counties to meet this deadline, the City's ultimate share of HAVA funds may therefore be decreased by several millions of dollars.

⁴ See ERMA § 11. In addition to the ERMA-mandated State law deadlines, the Board must also comply with the federal HAVA requirements. HAVA requires that all states have voting systems that meet the minimal standards enumerated in the law by January 1, 2006. See HAVA §§ 301. New York's lever voting machines arguably meet most of these standards, except for HAVA's handicap accessibility requirements.

⁵ See New York State Board of Elections, County Enrollment Totals as of November 1, 2004, available at http://www.elections.state.ny.us/enrollment/county/county_nov04.htm.

⁶ See HAVA § 102. The State received approximately \$49.6 million specifically to replace its lever voting machines. According to HAVA § 102(d), for every precinct by the first federal election in 2006 (the September 2006 primary) in which every lever machine is not replaced, the State must return \$3,192. See also United States Election Assistance Commission, Funding For States: Early Money Distributed To States – GSA Statistics, available at http://www.eac.gov/early_money.asp?format=none. ERMA does not specify how, if at all, any reductions will affect local boards of elections. A worst case scenario in which the State must return all the money could reduce the City's share of HAVA funds from around \$72 million to approximately \$53.3 million.

Importantly, ERMA directs the State Board of Elections, in conjunction with the State's Office of General Services, to enter into State procurement contracts with each voting machine manufacturer that has been certified by the State Board of Elections.⁷ This should expedite aspects of the procurement process, but as described more fully below, the Board must still determine which type of voting machine to buy – an optical scanning or direct recording electronic (“DRE”) system – as well as conduct a meaningful selection process for the manufacturer of the available voting machines.

Scope Of The Project To Implement New Voting Machines

The successful transition to new voting machines by the Board is critical so that there will not be chaos, long lines, and confusion at the polls when poll workers and the City's voters first use the new machines. Among other things, before the 2006 elections, the Board will need to:

- Purchase new voting machines;
- Convert its warehouses so that they can store sensitive voting equipment and find swing space to store new machines as they arrive, since existing warehouses will still house the old lever machines;
- Upgrade its computer systems to be compatible with new voting machines;
- Purchase needed accessories, such as spare parts, batteries, and equipment to make the machines accessible to the disabled as necessary;
- Reconfigure polling places and in some instances (due to space, electricity, and accessibility requirements) select new ones;
- Hire and re-train staff capable of managing the voting system;
- Train 30,000 poll workers; and

⁷ See ERMA § 12.

- Implement a public education campaign.

This is clearly a multi-dimensional project, requiring numerous components to occur simultaneously and thus necessitating detailed administrative plans. Furthermore, several of these components, including the evaluation of potential voting machines and upgrading of computer systems, require highly technical expertise.

At this point, it is difficult to assess the exact costs of these activities, but the Board has developed some preliminary calculations. In recent testimony before the City Council, John Ravitz, the Board's Executive Director, projected that the Board would require almost \$14 million in new needs funding for converting warehouses and finding additional "swing space" storage as the new machines arrive, upgrading computer systems, hiring new staff, and conducting poll worker training and public education.⁸ In addition, the Board has developed rough assessments of the cost of purchasing new voting machines, with some systems costing almost \$80 million.⁹ While a useful guideline, these estimates do not necessarily include all of the potential capital and operational costs the Board, and consequently the City, will incur as the actual costs of a new voting system and the Board's needs for effective implementation are better ascertained.

Efforts Undertaken By The Board Of Elections To Prepare For New Voting Machines

The Board has long been discussing the implementation of a new voting system for the City. In the mid-1980s and early 1990s, the Board and the City collaborated on an

⁸ See Testimony of John Ravitz, Executive Director of the Board of Elections, New York City Council Committee on Governmental Operations (May 23, 2005).

⁹ See Board of Elections, Electronic Voting Systems Department, New Voting Machines – Report on Costs 18-23 (Draft, Mar. 11, 2005).

ultimately unsuccessful project to replace the City's obsolete lever voting machines. In more recent years following HAVA's enactment, the Board has developed skeletal plans for purchasing new voting machines, met with voting machine manufacturers (including at its public meetings), and developed more extensive poll worker training and voter education plans. However, the Board has not yet prepared the more detailed project plans and timelines that are necessary for a project of this scope nor conducted sufficient research and evaluations of voting machines to meaningfully decide on the best voting system for the City.

This project is far more complex than any other the Board has ever faced. Indeed, the Board has not replaced its voting machines in more than forty years, and lever voting machines are far less complicated than the computerized systems available today. Although the Board has dedicated and knowledgeable staff, the complexity and technical aspects of this project require considerable outside expertise, including that available from other City agencies.

Importantly, speed is of the essence, and the Board must dedicate sufficient resources internally and acquire the necessary resources externally in order to meet State and federal deadlines. In many other areas the Board has moved far too slowly to address its problems and has not sufficiently sought outside assistance. The clearest example of this was the disastrous breakdown of the Board's telephone system and Internet website during the November 2004 elections. Unfortunately, the Board had resisted support from the City before the elections that would have mitigated this problem. While we commend the Board for taking steps to address these issues now -- in particular, collaborating with DoITT on upgrades to its telephone

system and Internet website to avoid another meltdown this coming election¹⁰ -- we view this as a cautionary example of the Board's history of proceeding too slowly on making improvements to the City's system of elections. Indeed, the Board should long ago have completed many of the recommendations we make in this report – including developing a project plan and hiring an external consultant.

Recommendations For Preparing To Purchase New Voting Machines

In view of the need for the Board to quickly and competently implement a highly technical and complicated project that will cost the City's taxpayers millions of dollars and determine how the City runs elections for the foreseeable future, it is imperative that the Board do the following immediately:

Develop A Detailed Project Plan

The Board has already determined in outline form the numerous steps it will need to undertake to complete this project. However, the Board must now develop a detailed project plan. This project plan should include a realistic but ambitious timeline with the goal of meeting the 2006 deadlines specified in State and federal law. Such a project plan should be available for public review and must contain, at minimum, the following features:

- Document the process for selecting, procuring, preparing, testing, and modifying voting machine systems;
- Explain how the Board will work with the selected vendor of the voting machines to integrate its systems and develop new operating procedures;

¹⁰ We note that although DoITT and the Board have reached a general agreement on how to avoid the telephone problems of the past election, these plans have not yet been finalized. We urge the Board and DoITT to expedite their work to complete this project immediately.

- Describe the process for revising the poll worker recruitment and training program;¹¹
- Detail the plans for a comprehensive public education program;
- Identify who will be responsible for such tasks and set target dates;
- Describe how the various groups within the Board will coordinate their efforts with City agencies and other external organizations; and
- Provide contingency plans should certain obstacles arise, such as the limited availability of machines within the required timeframe.

The many components involved in this project will require coordination among different divisions within the Board, such as its Electronic Voting Systems Department, its Election Day Operations Department, and other senior management and borough chiefs. In addition, the Board will need to work with various City agencies, such as DOITT, DCAS, MOCS, the Law Department, and the City's Office of Management and Budget. The Board will also need to interact with the State Board of Elections as part of the State contracting process, and will be required to obtain preclearance from the U.S. Department of Justice for voting changes covered under Section 5 of the federal Voting Rights Act. Without a central planning document, it will be practically impossible to keep these various entities coordinated and on task.

¹¹ As the Board revises its poll worker recruitment and training program, we strongly encourage it to carefully review the criticisms and recommendations for improving poll worker recruitment and training recently raised in highly significant and constructive reports by several civic groups. See Citizens Union Foundation, Project Report: 2004 Poll Worker Recruitment Program (June 22, 2005); New York Public Interest Research Group, Report From The Polls III (June 2005); Letter to John Ravitz from Glenn Magpantay, Asian American Legal Defense And Education Fund, re: Voting Barriers Observed During the General Election, Nov. 2, 2004 (June 16, 2005).

Acquire External Assistance From An Expert Consultant And City Agencies

In several conversations with the Board, the Task Force has emphasized what the Task Force sees as the need for the Board to obtain substantial external support in implementing this project. Specifically, we have discussed the Board's urgent need to hire an expert consultant to assist the Board in all aspects of this project as both a project manager and overseer of quality assurance. This is necessary for many reasons, including ensuring that the Board properly evaluates the costs and benefits of the various voting systems available, taking into account the experience of other jurisdictions. In addition, such an expert consultant would work with the Board to refine its project plan, evaluate its progress on each aspect of the plan, and identify and avoid potential risks. This would further assure voters that there is quality assurance for the Board's implementation of a new voting system.

Also important, the expert consultant would assist the Board in developing its specifications for new voting systems and evaluating the different types of State-certified machines the City may purchase. As we explained in our March 18 report, there are essentially two major types of modern voting systems: DRE machines and optical scanning systems.¹² The State Legislature has not chosen a single type of voting machines for use in the State but rather left this decision to the local boards of elections. Accordingly, the Board, together with its expert consultant, will need to rigorously evaluate the pros and cons of these types of machines, as well as the differences among the manufacturers of each machine, considering, at minimum, the following factors:

- The usability of the voting machine to the average voter;

¹² See Election Modernization Task Force, *The Urgent Need For State Voting Machines/HAVA Legislation 13-14* (Mar. 18, 2005).

- The accessibility of the voting machine to persons with disabilities and those from language minorities;
- The security of the voting system and the need to develop procedures to ensure the confidence of the voters that their vote will be counted accurately;¹³
- The total cost of acquiring the voting system, including potential accessory equipment for disabled voters and the services provided by the vendor to assist the Board in implementing the system;
- The life-cycle cost of the voting system, taking into account the lifespan of the voting machines and the need for printing paper ballots as necessary;
- The number of machines the City will need to purchase to sufficiently serve the voters and limit voter waiting time;
- The cost of modifications to the voting machine and its software so that it will meet the City's needs and properly interface with the Board's computer systems;
- The cost of upgrading warehousing space and transportation to the poll sites to protect sensitive computer equipment;
- The need to modify and perhaps find new poll sites to accommodate the spatial and electricity needs of the new voting system; and
- The cost of training poll workers and Board personnel and educating the public on how to use the new voting system.

As noted above, federal HAVA assistance will not cover the full cost to the City of implementing a new voting system. It is therefore imperative that the Board work with its external consultant to properly evaluate the voting machines in order to minimize unnecessary costs to the City. The only silver lining in the State's otherwise unfortunate delay, is that the Board may now learn from the experiences of other jurisdictions.

¹³ Several security procedures -- such as the requirement that a voting system produce a voter-verified paper trail (or retain paper ballots) and do not contain wireless communication capabilities, a mandate that voting machines vendors place their programming in escrow, and an automatic auditing procedure -- are specified in the recently passed State legislation. See ERMA §§ 6, 8 and 14.

The Board has agreed to the concept of hiring an expert consultant and has been collaborating with DOITT to identify and contract with one. We urge, however, the Board to work quickly to bring the expert consultant on-board and then to fully utilize the services of the consultant in all aspects of this project. As the Board enters the election season, its staff will be busy working on other assignments and may not have sufficient time to dedicate to selecting an expert consultant and otherwise preparing to purchase new machines. This is all the more reason to make the acquisition of an expert consultant a top priority of the Board and its staff. While we believe it is unfortunate that the Board did not hire such a consultant a long time ago, it is essential that the consultant begin working with the Board as soon as possible, and certainly no later than the end of August.

In addition, the Board should continue to work with the City agencies that can provide it expertise in implementing this project. For example, DOITT, as noted above, has collaborated with the Board on finding an expert consultant (and is working with the Board on upgrading its telephone system and website); MOCS has offered to work with the Board on developing criteria and a methodology for evaluating voting systems; DCAS has met with the Board to discuss the Board's future warehousing needs, including swing space, for the new voting machines; and the Law Department is available to assist in the procurement process. The Board must take full advantage of the expertise of these and other City agencies.

Solicit Public Input

Because the selection of a new voting system will affect the way elections are run in the City for the foreseeable future, it is essential that the Board sufficiently solicit public input. ERMA establishes such a process on the State level through the creation of a Citizen's Election Modernization Advisory Committee composed of the co-executive directors of the State Board

of Elections, local board of elections commissioners, members of disability rights organizations, and representatives appointed by State Legislative leaders. This Committee is to advise the State Board of Elections as to whether voting machines submitted for certification meet the requirements of HAVA and State law.¹⁴

It is also important that the Board receive and consider public input. To its credit, the Board has already taken steps in that direction. Since the passage of HAVA, the Board's Executive Director John Ravitz has testified numerous times before the City Council and at meetings of the Voter Assistance Commission to explain the Board's plans on implementing HAVA. In addition, at some of the Board's weekly public meetings it has had presentations on various voting systems and discussed issues related to this project.

We encourage the Board to build on these efforts, perhaps by sponsoring a fair to present the possible voting machine systems to the public or by holding a hearing at which members of the public could share their views on the features they believe should be included in the City's new voting systems. Given time exigencies, together with the fact that the Board has already engaged in some public processes and the existence of the Citizen's Election Modernization Committee as called for in ERMA, this additional public input should be structured so as not to cause delay. In addition, the Board should continue to inform the public in sufficient detail on its plans for implementing new voting machines. The greater amount of public input the Board receives and in turn provides, the more likely voters will be comfortable with the new voting system that is selected.

¹⁴ See ERMA § 5.

Be Ready To Purchase New Machines When The State Board of Elections Completes Its Work

The ultimate goal of these preparations is to ensure that the Board is fully ready to select a voting machine and begin the procurement process when the State Board of Elections finishes certifying new machines and enters into State contracts with the voting machine vendors. The Board must use the little time it has now to become fully versed in all of the technical and cost issues involved in the selection decision and receive as much external advice from the expert consultant, City and State agencies, and the public as practical. Thus, once the State Board of Elections completes its work, the Board should be fully prepared to decide immediately whether the City will purchase a DRE or an optical scanning voting system, and then which manufacturer of the selected system best meets the City's needs and cost considerations.

At the same time, the Board must work with the necessary City agencies to ensure that all the technical aspects of the procurement process, including drafting the necessary documents, as outlined in State law, are followed without delay. In addition, the Board will need to obtain preclearance from the U.S. Department of Justice for changes to voting procedures that are covered under Section 5 of the Voting Rights Act. Finally, the Board must be fully prepared to follow through on all the other tasks on its project plan – including recruiting and training poll workers, running a public education campaign, and addressing all of the other modifications necessary to accommodate the new machines.

Conclusion

The transition to new voting systems represents a critical opportunity to move the City's antiquated system of elections into the twenty-first century. However, if this project is not managed properly, what should be an important gain for the City's voters could quickly

deteriorate into chaos and confusion at the polls. The Task Force therefore urges the Board to take all possible steps, including those outlined in this report, to ensure that this very complicated project, which was made more difficult by the State's delay, is a success. If the Board merely maintains its current level of effort, it will not meet the quickly approaching State and federal deadlines nor complete the necessary preparations to ensure the City obtains the voting system that best meets the needs of the voters.

Respectfully submitted,

The Election Modernization Task Force

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- **Stephen J. Fiala**, the Richmond County Clerk and the Commissioner of Jurors for Richmond County.
- **Jerry Garcia**, Vice President and Client Executive at The Bank of New York.
- **Colvin W. Grannum**, the President of the Bedford Stuyvesant Restoration Corporation.
- **Gail Hilson**, a community and political activist, a former candidate for the New York State Assembly in the 73rd District and a member of the Board of Directors, Citizens Union.
- **Peter Vallone, Sr.**, former Speaker of the City Council.

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