



County Boards of Elections

Compliance with the Election Law

2008-MS-7



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State of New York Office of the State Comptroller

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Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and local governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our statewide review of County Boards of Elections' Compliance with the Election Law. This review was conducted pursuant to Article V, Section 1 of the State Constitution, and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This review's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

Office of the State Comptroller



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

New York's 57 counties and the five boroughs of New York City must be prepared to accommodate more than 11 million potential voters on Election Day. The State Board of Elections is responsible for overseeing these 58 Boards of Election (Boards). The Boards were established and mandated by Section 3-200 of the New York State Election Law (Election Law). Each Board outside New York City consists of two Commissioners representing each of the county's two major political parties. The City of New York Board consists of 10 Commissioners, two from each county. Boards support and oversee election operations for primary and general elections, for school board, fire district and village elections, and for special elections throughout the counties.

Boards are responsible for all aspects of the electoral process, from voter registration to the implementation of and compliance with the Election Law. Their responsibilities include appointing and training sufficient staff and technicians to work at elections, ensuring the operability of voting machines, ensuring that polling places are accessible by disabled voters, addressing voter complaints, and providing for the capability to handle voter turnout.

Scope and Objective

We reviewed election boards in 18 counties throughout New York State during the period September 22, 2008 to October 6, 2008 to determine if they were in compliance with provisions of the Election Law. Our audit addressed the following question:

- Are County Boards of Elections complying with pertinent provisions of Election Law?

Because of time limitations, we did not examine how well the Boards are processing new voter registrations and the steps that they are taking to ensure that the voter registration books are as complete and up-to-date as possible. This activity is underway and statutorily continued beyond the end of our fieldwork.

Audit Results

Based on the work we performed at our sample of 18 counties, we concluded that, while many of the Boards we reviewed were generally in compliance with the Election Law, others needed to take additional steps to achieve compliance. All the Commissioners we interviewed believe they will be prepared for the 2008 election and expect to continue preparations up until Election Day.

At the time of our review, which was completed on October 6, 2008, not all the Boards had appointed the number of staff required by the Election Law for the upcoming election. We also found that

many Boards lacked documentation verifying whether the Boards had provided training and the corresponding testing for election staff. Documentation of voting machine testing and repairs was also lacking at certain counties. However, we also found that the Boards do monitor and respond to voter complaints, and that they all ensure their polling sites are handicapped-accessible. All the Board officials we interviewed at the 18 counties indicated they expected to have sufficient staff for the November 2008 elections, and each county planned on appointing additional staff to be available to substitute for absent workers. Board officials also indicated they would be able to handle the capacity of voters necessary to minimize voter lines on Election Day.

We urge Boards in counties statewide to take steps to ensure full compliance with the Election Law and to take any other steps possible to ensure an efficient election process. We suggest that Boards ensure an adequate supply of paper ballots at all polling sites, that adequate reserve staff be hired to fill in for unexpected staff absences or to assist at crowded polling sites as they are identified during the course of Election Day, and ensure that all election inspectors are instructed on the proper use of paper ballots so that all eligible New Yorkers have the opportunity to participate in the electoral process.

Introduction

Background

New York's 57 counties and the five boroughs of New York City must be prepared to accommodate more than 11 million potential voters on Election Day. The State Board of Elections is responsible for overseeing these 58 Boards of Election (Boards). The Boards were established and mandated by Section 3-200 of the New York State Election Law (Election Law). Each Board outside New York City consists of two Commissioners representing each of the county's two major political parties. The City of New York Board consists of 10 Commissioners, two from each county. Section 3-300 of the Election Law requires equal representation of the two major political parties in the appointment of Board employees. Boards support and oversee election operations for primary and general elections, for school board, fire district and village elections, and for special elections throughout the counties.

Boards are responsible for all aspects of the electoral process, from voter registration to the implementation of and compliance with the Election Law. These Boards are dedicated to ensuring that all eligible residents have the opportunity to vote.

The Boards' responsibilities include, but are not limited to, the following:

- Appointing a sufficient number of election inspectors, poll clerks, election coordinators, voting machine technicians and custodians to adequately staff elections
- Providing training to election workers
- Testing and repairing voting machines
- Ensuring accessibility of polling places for disabled voters
- Monitoring and addressing voter complaints, such as long lines and voting delays, and ensuring the county has the capacity to handle voter turnout.

Election inspectors administer the voter registration process, supervise the operation of polling places, including the proper functioning of voting machines, certify the vote count for each voting machine when the polls close, and have custody of the ballot box until it is delivered to the individual who is entitled by law to receive it. Poll clerks and election coordinators are appointed, as needed, to

work on Election Day and assist election inspectors in performing their duties. Voting machine technicians inspect voting machines to ensure they are in good working order, and can reject any machine that is not in suitable condition. Details of duties of these staff are in Appendix A.

The following table provides information regarding the numbers of enrolled voters, election districts and polling places at the 18 counties included in our review:

Counties	Enrolled Voters as of March 1, 2008	Election Districts	Polling Places
Albany	197,521	349	166
Broome	123,978	190	123
Erie	669,013	986	353
Fulton	32,025	49	27
Greene	32,137	52	27
Kings	1,288,605	2,032	389
Lewis	17,054	31	20
Monroe	445,043	837	371
Nassau	927,103	1,160	397
New York	1,036,012	1,247	351
Onondaga	294,271	459	203
Putnam	61,927	86	25
Rensselaer	105,955	134	92
Schoharie	18,953	27	16
Schuyler	12,579	17	17
Suffolk	899,326	1,047	349
Westchester	622,495	1,034	394
Wyoming	25,862	40	19

Objective

The objective of our examination was to review 16 Boards throughout New York State (outside New York City) and two counties within the New York City Board of Elections to determine if they were operating in compliance with the Election Law. Our review addressed the following question:

- Are County Boards of Elections complying with pertinent provisions of the Election Law?

Review Scope and Methodology

We examined Boards of Elections in 18 counties in New York State (including two counties in New York City) during the period September 22, 2008 to October 6, 2008.

Because of time limitations, we did not examine how well the Boards are processing new voter registrations and the steps that they are taking to ensure that the voter registration books are as complete

and up-to-date as possible. This activity is underway and statutorily continued beyond the end of our fieldwork.

More information on the methodology used in performing this review is included in Appendix C of this report.

Compliance with the Election Law

For the election process to function efficiently and effectively, Boards need to be aware of their statutory responsibilities as set forth in the Election Law. Important components of these responsibilities include appointing and training a sufficient number of staff for the election, ensuring voting machines have been tested and repaired, ensuring that voters with disabilities have access to the polls, and making sure each polling site has the capacity to handle all the voters who turn out to cast their votes.

Based on the work we performed at our sample of 18 counties, we concluded that, while many of the Boards we reviewed were generally in compliance with the Election Law, others needed to take additional steps to achieve compliance. All the Election Board officials we interviewed believe they will be prepared for the 2008 election and expect to continue preparations up until Election Day. At the time of our review, which was completed on October 6, not all the Boards had appointed the number of staff required by the Election Law for the upcoming election. We also found that some Boards lacked documentation verifying whether the Boards had provided training and the corresponding testing for election staff. Documentation of voting machine testing and repairs was also lacking at certain counties. However, we also found that the Boards do monitor and respond to voter complaints, and we found that virtually all polling sites are handicapped-accessible. Board officials indicated they would be able to handle the capacity of voters necessary to minimize voter lines on Election Day.

Staffing

Having a sufficient number of staff working at the polling sites during the election is critical to ensuring that the voting process is completed in an efficient and effective manner. Election Law requires that each election district of the State have four election inspectors per district and an additional two poll clerks for each district where two voting machines are used. The Election Law requires that all necessary staff be appointed by July 15. Boards are also required to appoint as many voting machine technicians and custodians as necessary for the proper preparation and repair of voting machines.

We reviewed the staffing assignments for a sample of approximately 1,200 election districts within the 18 sampled counties. We found that election districts in 16 counties had not appointed all their election inspectors and poll clerks by July 15; nine of these 16 counties had not yet appointed the required numbers of election staff as of the date of our review. Board members indicated they are

continuing to appoint and train inspectors during October and plan on having the required number prepared and in place by Election Day.

Only five of 18 counties employ poll clerks. Those counties that did not hire poll clerks generally had only one voting machine per District (poll clerks not required) or assigned two additional election inspectors to function as the two required poll clerks. However, one county without poll clerks did not plan to hire additional staff at 96 districts, each of which has two voting machines. The Board should comply with the Election Law to ensure that there is adequate staffing for an efficient voting process on Election Day.

Six counties took additional steps to appoint and train election coordinators to provide additional staffing and direction for voters at some of the busier polling sites. For example, both counties in New York City appointed coordinators. All of the Board officials we interviewed at the 18 counties indicated they expected to have sufficient staff on Election Day, and each county planned on appointing additional staff to be available to substitute for absent workers. It is important that all counties statewide assess their staffing needs as soon as possible and hire the staff they need, both to meet the Election Law's requirements and to address contingencies.

Training

Training election staff is an important step in making sure that all workers understand their roles and responsibilities on Election Day. Election Law requires the Board to provide a course of training and education on the preparation, use, maintenance and repair of voting machines. Attendance at this course is required for voting machine technicians who have not previously completed such a course. All 18 counties indicated their technicians were trained and qualified, although more than half of our sampled counties did not maintain training records. Therefore, we could not verify their assertions and without training records the Boards themselves cannot be sure that each technician has been properly trained and is capable of maintaining and repairing the machines.

Each Board is also required, at least annually, to conduct a mandatory school for the instruction of election inspectors, poll clerks and election coordinators and administer an examination prior to certification of the staff. (Details of the core curriculum for this training are in Appendix B.) We found that some counties had not fully complied with this requirement.

- Eight of the 18 counties had not completed all the training at the time of our review, although these counties have training classes scheduled for October.

- The exams are not administered in a consistent manner: exam varieties included group exams, oral exams and written exams. One county informed us that it does not administer a formal exam.
- Counties lacked documentation that each individual participant passed the exam administered by that Board.

Without retaining documentation that required training has been provided, and gaining assurance that participants have learned the proper skills because they have passed an exam, Boards cannot be certain that all staff are qualified to perform the necessary duties required of them on Election Day. Boards statewide need to review their training records, schedule additional training, as needed, and require participants to demonstrate that they understand the duties of their position.

Voting Machines

Properly functioning voting machines are critical to ensuring that all votes are recorded and counted accurately. Section 7-206(3) of the Election Law requires that Boards test each machine at least annually under the supervision of the State Board of Elections. We found the Boards lacked adequate documentation that the required testing is performed. Two of the 16 counties outside New York City did not perform regular testing, and of the 14 that indicated they performed such tests, only four had documentation of the tests that had occurred. We also found that 10 of the 16 counties did not maintain repair records, which prevented us from determining what maintenance had been completed.

New York City counties are not subject to the requirements stated in Section 7-206(3), according to State Board officials, because their voting machines were in place before the effective date for this requirement. However, we found the two New York City counties we visited had a detailed process for setting up voting machines and ensuring they are ready for use. Both counties also had a preventive maintenance and repair log, along with a checklist detailing repairs that were completed.

We did determine that all 18 counties had contingency plans in case of voting machine malfunction during the election. The plans included the ability to dispatch machine technicians, inventories of back-up replacement machines, and supplies of paper ballots. While all the Boards were confident their machines were in proper working order, the lack of documentation for machine testing and repairs prevented us from verifying if all machines are ready for the election. Boards statewide need to ensure that all machines have been tested.

Handicapped Accessibility

Boards are required to ensure that polling sites are accessible to voters who have disabilities. All 18 counties have taken steps to ensure their sites are accessible. Of the approximately 3,340 polling places within the 18 counties we examined, only four are not handicapped-accessible, and those four sites have waivers on file that currently exempt them from this requirement. The accessibility to voting sites ensures that all registered voters will have access to voting machines and be able to cast their votes on Election Day.

Addressing Voter Complaints

It is important to make sure each polling site is prepared to handle the maximum number of voters, and to minimize lines and wait times so everyone has an opportunity to cast their votes. During our review, we found that each Board responded to complaints as they occurred. Boards in 15 of the 16 counties outside New York City indicated they have not received complaints about long waits, and are confident they have the capacity to handle the number of voters that are likely to turn out on Election Day.

We identified only one county outside New York City that experienced delays during the 2007 primary. Delays resulted in this case when more than 150 voters who were not listed in registered voter poll books attempted to vote at two polling sites. Because these voters had to vote by affidavit, the extra time required created longer wait times for other voters in line. The Board received a formal complaint and took corrective action by appointing election coordinators to work at their busy polling sites to mitigate future concerns. It is important that Boards ensure that each polling place has sufficient paper ballots on hand for voters who may not yet be listed in the registered voter poll books.

Board officials had received complaints from voters about delays in both New York City counties we reviewed. Several complaints were also made regarding a shortage of poll workers, late poll openings and missing supplies. Board officials acknowledged receiving the complaints, and indicated that they are monitoring their operations and responding to complaints as they occur. However, Board records in these two counties did not always indicate how problems were corrected.

The Election Commissioners and Board officials in all 18 counties indicated they are prepared to handle a high turn-out of voters in the November 2008 election. We urge the Boards in all counties to ensure they are prepared to prevent delays from occurring, particularly at busy polling places, and to quickly correct any problems that are reported.

Recommendations

1. Boards of Elections need to ensure that sufficient staff is appointed and trained prior to the election.
2. Boards of Elections should document all training programs provided to election employees and ensure workers have passed a test to demonstrate they are prepared for the election.
3. Boards of Elections should maintain documentation that each voting machine has been tested and repaired to ensure that all voting machines are ready for the election.
4. Boards of Elections should maintain documentation of complaints received and how the complaints were addressed.

APPENDIX A

Duties of Election Inspectors, Poll Clerks, Election Coordinators and Voting Machine Technicians

Election Inspectors

Each county has a board of election inspectors, with representatives from the two major political parties. Inspectors receive and review registrations, and can accept or refuse a registration for cause. At the close of registration, the board of inspectors submits to the county's Board of Election a certified list of registered voters and their addresses, as well as the names and addresses of any persons whose registration was refused, and the reason for the refusal.

On Election Day, the inspectors must meet at the polling place at least 30 minutes before the polls open to set up operations. These duties include ensuring adequate supplies (e.g., pencils, paper ballots) are available; unlocking ballot boxes and verifying they are empty; inspecting the voting machine(s), ensuring that each machine's counter is set at zero; posting voter information, including a sample ballot, a voter's bill of rights, and how voters can protest what they believe to be a violation of their right to vote; and announcing that the polls are open for voting. Two inspectors from different political parties control the registration poll ledgers or computer-generated registration lists of voters, and verify each voter's signature with that on the ledger. Inspectors provide affidavits to voters whose registration record is lost or misplaced, and challenge any voter whom they suspect is not entitled to vote in the district. Inspectors also preserve order in and around the polling place and keep access to it unobstructed.

As soon as the polls are closed, the inspectors lock the voting machine; certify the accuracy of the number of persons who voted, as shown on the counters; account for any paper ballots used; canvass the machine vote; and cast and canvass all the ballots. Each inspector is personally responsible for the custody of each ballot box and its contents from the time the election begins until the box is delivered, according to law, to the person entitled to receive it.

Poll Clerks

The duties of poll clerks, if any are used, are prescribed by the county's board of elections. Poll clerks serve only on Election Day, and assist election inspectors in performing their duties. Two additional poll clerks may be appointed in any election district where 25 or more registrants received absentee and military ballots. Such clerks must canvass the absentee and military ballots when the polls close.

Election Coordinators

The board of elections of each county and the board of elections for New York City may, in its discretion, appoint election coordinators to perform Election Day duties, including directing voters to their proper polling place and assisting election inspectors and poll clerks in the performance of their duties.

Voting Machine Technicians

The voting machine technicians work under the direction of the county's board of elections to supervise the preparation of the voting machines, inspect machines to ensure they are in proper working order, and notify the board of elections and the appropriate town or city clerk of repairs found to be needed on any machine. They can recommend the rejection of a machine as not in suitable mechanical condition for use in an election.

APPENDIX B

Training Curriculum for Election Inspectors, Poll Clerks and Election Coordinators

According to the Election Law, inspectors, poll clerks and election coordinators must be instructed in the Election Law, and their duties related to taking registrations, the use of voting machines and disability etiquette. The mandatory core curriculum covers the rights of voters at the polls and obligation of election workers to protect those rights while maintaining the integrity of the franchise. Training topics include, but are not limited to, the following:

- how to assist voters with disabilities or with limited or no proficiency in the English language
- the handling, processing and entitlement to ballots, including affidavit and emergency ballots
- proper identification requirements
- procedures to be followed with respect to voters whose names are not on the list of registered voters or whose identities have not been verified
- prohibited activity, such as electioneering and other violations of the elective franchise, and solicitation by individuals and groups at the polling place
- procedures to be followed after the polls close.

Each board of elections is required to enhance the core curriculum with local procedures, including procedures relating to proper operation of, and remedying problems with, the voting machine or system in use in that jurisdiction.

APPENDIX C

Review Methodology

We reviewed the Boards of Elections for 18 counties during the period September 22, 2008 through October 6, 2008 to determine if they comply with pertinent provisions of Election Law. To accomplish our objective and obtain relevant evidence, our procedures included the following:

- We interviewed the Commissioners of 16 County Boards of Elections outside New York City, as well as New York City Board of Elections officials, to determine what policies and procedures they follow to: appoint, train and test election staff; test and repair voting machines; ensure accessibility to polling places for disabled voters; monitor voter complaints; and ensure they have the capacity to handle voter turn-out.
- We sampled 1,200 election districts within the 18 counties to determine if the Boards hired the correct number of election staff as required by Election Law.
- We reviewed a sample of the appointments of election staff to determine if they were completed by July 15 and verified the documentation supporting those appointments.
- We reviewed the Boards' plans to address staff absenteeism on Election Day.
- We reviewed documentation of training administered to machine technicians, election inspectors, poll clerks and election coordinators and verified the method of testing used to verify their skills.
- We reviewed documentation to determine if voting machines were tested annually and we inspected the repair records of the voting machine technicians.
- We reviewed the Boards' contingency plans in the event a voting machine malfunctioned at any of the polling sites.
- We inquired whether polling places were handicapped accessible and if waivers existed for those that were not.
- We reviewed records of complaints to determine if they were specific to long lines and delays for voting and determined if the Boards had taken action.
- We inquired about the capacity to handle large numbers of voters and if the Boards believed they would be prepared for the high voter turn-out expected at the November 2008 election.

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