



New York City Council

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Finance Division

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Hearing on the Mayor's Fiscal Year 2011 Executive Budget

Board of Elections

May 17, 2010

Committee on Finance

Hon. Domenic M. Recchia, Jr., Chair

Committee on Governmental Operations

Hon. Gale A. Brewer, Chair

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Summary and Highlights

Board of Elections

Dollars in Thousands

	2008 Actual	2009 Actual	2010 Adopted	2010 Exec. Plan	2011 Executive	Difference, 2010 – 2011*
Spending						
Personnel Services	\$24,714	\$25,976	\$17,543	\$26,352	\$18,274	\$731
Other than Personal Services	55,962	55,079	68,675	70,282	70,098	1,422
Table Total	\$80,676	\$81,054	\$86,218	\$96,634	\$88,371	\$2,153

The Fiscal 2011 Executive Budget for the Board of Elections (approximately \$88.4 million) is \$2.2 million greater than the agency's Fiscal 2010 Adopted Budget of \$86.2 million. The proposed Fiscal 2011 appropriation is more than \$8 million lower than the Board's Fiscal 2010 Budget as proposed in the Executive Plan. This decrease is in part attributable to budget reductions that have lowered the agency's baseline funding over the course of several financial plans. Additionally, the deficit between the current Fiscal 2010 plan and the proposed Fiscal 2011 appropriation is a function of the more than \$22 million in one-time funding added to the agency's Fiscal 2010 budget since Adoption. This funding is intended to cover costs associated with runoff elections, an agency funding deficit, and collective bargaining.

Issues and Budget Highlights

- Switch-Over from "Shoup" Lever Machines to Optical Scan Machines.** This Fall, the Board will be conducting its first ever elections using optical scan voting machines. These modern machines will replace the mechanical Shoup machines whose levers and reset arm have become familiar to New York City voters over the past many decades. Implementation of the new machines, required under the federal Help America Vote Act (HAVA), will be a herculean task. In addition to the procurement, storage, set-up, testing and distribution of the voting machines, the Board will have to train its voter machine technicians, poll workers and the voting public as to the working of the voting systems.
- Budget Reductions.** Over the past several Financial Plans, the Board has sustained significant baseline reductions. Some of these were cuts restored by the Mayor's Office of Management and Budget (OMB) in the current year, while outyear reductions accumulated. The January Plan was no different: While \$20.5 million was added to the Board's current year budget to pay for expenses associated with runoff elections as well as a general funding deficit, \$6.2 million was removed from the agency's baseline budget beginning in Fiscal 2011. Recognizing the important tasks the Board must accomplish in the next few months, as well as in future years, OMB restored this \$6.2 million in the Executive Plan. A smaller, newly proposed baseline reduction would remove \$1 million annually from the Board's overtime budget. Again, this reduction is more than offset by the baseline funding of \$4 million to cover additional ballot printing costs.
- Reforms.** Reforming the manner in which New York City residents vote and register to vote continues to be a hot topic. Some reforms would require legislative changes or changes in the State Constitution. Others could be accomplished through alterations in City policy. Consistent with prior budget hearing briefing reports, a discussion of some of these reforms is included below.

Board of Elections

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.

Board of Elections

Dollars in Thousands

	2008 Actual	2009 Actual	2010 Adopted	2010 Exec. Plan	2011 Exec. Plan	Difference 2010-2011
Spending						
Personal Services	\$24,714	\$25,976	\$17,543	\$26,352	\$18,274	\$731
Full-Time Salaried – Civilian	13,848	14,418	12,578	14,028	14,049	1,472
Other Salaried & Unsalariated	4,536	4,211	1,414	1,774	1,674	259
Additional Gross Pay	184	277	89	89	89	0
Overtime - Civilian	6,007	6,942	2,292	9,292	1,292	(1,000)
Fringe Benefits	139	128	24	24	24	0
Amounts to be Scheduled	-	-	1,146	1,146	1,146	0
Other Than Personal Services	\$55,962	\$55,079	\$68,675	\$70,282	\$70,098	\$1,422
Supplies and Materials	2,973	3,410	3,081	3,319	3,081	0
Property and Equipment	1,808	901	800	792	800	0
Other Services and Charges	13,497	15,911	31,658	17,574	29,081	(2,578)
Contractual Services	37,683	34,857	33,136	48,597	37,136	4,000
TOTAL	\$80,676	\$81,054	\$86,218	\$96,634	\$88,371	\$2,153
Funding						
<i>City Funds</i>	\$80,676,	\$81,054	\$86,218	\$96,634	\$88,371	\$2,153
TOTAL	\$80,676	\$81,054	\$86,218	\$96,634	\$88,371	\$2,153
Headcount						
Full-Time Salaried	336	340	319	319	319	-

Agency Highlights

- **Help America Vote Act of 2002 (HAVA).** The Help America Vote Act 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 urged the State to ensure that the State Board takes all necessary steps to fully implement HAVA according to the terms outlined by the Court in the Supplemental Order. In particular, the State Board needed to comply with all Court ordered implementation deadlines to ensure that local Boards of Election were able to take the necessary steps to implement permanent voting systems for 2009 and beyond. The State also was encouraged to ensure that all state and local Board of Elections staff, including poll workers, be sufficiently prepared to educate and assist voters as the State replaces its lever machines with new, sophisticated voting technology. More specifically, the State was urged to ensure that local Boards of Elections have State-certified voting machines from which to choose so that the new machines could be properly deployed in 2009.

Although the City Board of Elections conducted voting machine demonstrations and held a public hearing to allow comment from the public, it was clear last Spring that the prospect of meeting the court-ordered implementation of new voting machines by the September 2009 election was 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 was the required training for voting machine technicians and poll workers, as well as necessary public education efforts. The Board's executive staff has long expressed concern that due to circumstances clearly beyond its control, the agency would 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.

After years of delay, the State finally finished its performance testing last fall and certified two machines for selection by local boards of elections. One of the machines is of the optical scan variety, while the other uses touch-screen technology similar to automated teller machines (ATMs). The Board conducted a review, held public demonstrations and hearings, and finally selected the optical scan machine for use beginning in September. As of this writing, procurement was well under way.

City Council Legislative Agenda Items

- **Full-Face Ballot Requirements.** The New York City Council has long urged 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. Therefore, unless the election law is amended, there is a strong possibility that the equipment procured by the City 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 ballot, 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 has in the past called 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 has in the past called 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) 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 included an additional sum of \$27.5 million for other purposes, including the outfitting of office and warehouse space. Both the Board and OMB believe that ample Capital funding exists to purchase the required voting hardware and to fund the agency's associated technical assistance contracts.

- **IRS Re-Classification of Poll Workers.** The BOE was recently informed of an IRS determination indicating that for the purpose of taxation poll workers are employees of the Board and not independent contractors, as they have long been treated. Immediate compliance with this determination is called for. As independent contractors, poll workers have historically been funded using Other Than Personal Services (OTPS) appropriations and no taxes have been withheld and paid by BOE. The Board is currently seeking guidance as to how it should process the more than 30,000 poll workers that it will require for this Fall's elections. Poll works are a vital component of the Board's Election Day operations, as they will assist voters and insure the integrity of the voting process at sign-in tables, privacy booths and around voting machines. The length of their workday may also increase as preparation time before polls open and wrap-up time after the polls close may be increased to accommodate the new voting machines and HAVA requirements.

Financial Plan Actions

- **Across-the-Board Reductions.** The January Plan proposed across-the-board reductions to the Board of Elections totaling approximately \$6.2 million. Of this amount, approximately \$1.5 million would have been taken from the Board's Personal Services (PS) budget and \$4.7 million would have been taken from the Board's Other Than Personal Services (OTPS) budget. The Executive Budget restored this funding in total. No new across-the-board reductions were proposed by OMB.
- **Baseline Overtime Reduction.** The Executive Plan proposes a baseline \$1 million reduction in BOE's overtime funding. OMB reports that a significant portion of the agency's PS budget is targeted for overtime, making this budget reduction achievable. The Board is concerned given its reliance on overtime to prepare for and conduct its elections.
- **Additional Ballot Printing New Need.** The Executive Plan adds \$4 million to BOE's baseline budget to cover the costs of ballot printing.
- **Runoff Elections New Need.** In November, the Board conducted citywide runoff elections for the offices of Comptroller and Public Advocate. As no discrete funding existed in the agency's budget for this endeavor, one-time funding in the amount of \$13.5 million was included in the January Plan to reimburse the Board for this Fiscal 2010 expense.
- **Funding Adjustment/Funding Deficit.** The January Plan included a one-time funding adjustment of \$7 million in Fiscal 2010 to cover a deficit in the agency's budget. This additional funding was to allow the Board to better meet its operational responsibilities for the remainder of the year. Despite this adjustment, the Board reports continued deficits in its current year budget. Through the end of April, the Board reports PS obligations of \$22.7 million and available PS appropriations of only \$14.8 million.

By BOE's estimate, this \$7.9-million deficit is likely to grow to about \$9 million by year's end. PS deficits of this magnitude are projected by BOE in Fiscal 2011 as well.

Similarly, the Board projects an OTPS deficit in the current year of approximately \$15 million, leading to Fiscal 2011 concerns as well. Shortfalls in one or both years may occur in the areas of transportation, rent, printing, postage and warehousing, among others.

Should BOE's budget prove to be insufficient for its purposes as the Fall elections approach, mid-year funding adjustments or PEG restorations may be required in Fiscal 2011 as they were in Fiscal 2010.

- **Collective Bargaining.** The January Plan added approximately \$1.7 million in annual collective bargaining funds for the Board beginning in Fiscal 2010.

Appendix A: Budget Actions Since Fiscal Year 2010 Adoption

Description	Fiscal 2010			Fiscal 2011		
	City	Non-City	Total	City	Non-City	Total
Agency Budget as per the June 2009 Plan	\$86,218	\$0	\$86,218	\$71,542	\$0	\$71,542
Programs to Eliminate the Gap (PEGs)						
Overtime Savings	\$0	\$0	\$0	(\$1,000)	\$0	(\$1,000)
Total PEGs	\$0	\$0	\$0	(\$1,000)	\$0	(\$1,000)
New Needs						
Runoff Elections	\$13,500	\$0	\$13,500	\$0	\$0	\$0
Additional Ballot Printing	\$0	\$0	\$0	\$4,000	\$0	\$4,000
Total New Needs	\$13,500	\$0	\$13,500	\$4,000	\$0	\$4,000
Other Adjustments						
HAVA Roll	(\$11,950)	\$0	(\$11,950)	\$11,950	\$0	\$11,950
Heat, Light & Power	\$156	\$0	\$156	\$170	\$0	\$170
Funding Adjustment	\$7,000	\$0	\$7,000	\$0	\$0	\$0
Collective Bargaining - CWA 1184	\$1,503	\$0	\$1,503	\$1,503	\$0	\$1,503
Collective Bargaining - Managers & Other Jurisdictions	\$206	\$0	\$206	\$206	\$0	\$206
Total Other Adjustments	(\$3,085)	\$0	(\$3,085)	\$13,829	\$0	\$13,829
Total Plan Changes	\$10,415	\$0	\$10,415	\$16,829	\$0	\$16,829
Agency Budget as per the Fiscal 2011 Executive Plan	\$96,634	\$0	\$96,634	\$88,371	\$0	\$88,371