

Testimony of Todd D. Valentine
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 before the Joint Hearing of the
 New York State Senate Finance Committee and
 New York State Assembly Ways and Means Committee
 February 11, 2019

I. Impact on the State Board’s Current Operations

The proposed Executive 2019/20 SFY budget, if adopted, would result in a substantial reduction of operating funds for the State Board of Elections in both personal services and nonpersonal services. This reduction would substantially impact the agency’s ability to provide current services, not to mention the new responsibilities put on the agency to establish certification programs to properly implement Early Voting and other programs that will become effective during the existing 2018-19 SFY budget and the next budget.

The proposed executive SFY 2019-20 budget appropriates to the NYSBOE, for non-enforcement matters, \$2,995,000 of nonpersonal services funds while we estimate that \$4,380,000 is required to meet current program obligations (-\$1,385,000). Further, proposed personal services funds of \$4,065,000 is provided although we estimate that \$5,767,074 is required to meet current program obligations (-\$1,702,074). In addition to the funds appropriated in the SFY 2018-19 adopted budget were technology funds that were re-appropriated. The total amount of the funds is being utilized to supplement NYSBOE IT staff with Hourly-Based Information Technology Service workers (HBITS). The combined technology staff are working on several long-term programs at the Board that are badly in need of upgrades.

The State Board is the clearinghouse for over 16,000 filers of campaign finance disclosure information. The existing financial disclosure database system (FIDAS) was designed in 1994 for a much smaller number of filers and both the database and the electronic filing software (EFS) used by candidates and committee treasurers require a significant redesign to update the software systems used and improve functionality to ensure compliance with disclosure requirements.

The State Board’s Election Operations Unit utilizes the Candidate Petition Administration System (CAPAS) for managing the filings of candidates running for office. This system is also used by the Compliance Unit to identify candidates who should be filing campaign finance disclosures. However, CAPAS does not capture all candidates for all offices, particularly those seeking to run for local office who do so by filing at their respective county boards. A new system which would allow data sharing between 57 county boards, the New York City board and the State Board would significantly improve our ability to provide information on candidates running for office

throughout the state as well as identify those individuals who may be required to file disclosure reports with the State Board.

The State Board has been working to design upgrades for these systems for several years. The technical infrastructure for both systems are being designed in a way to be complementary to one another to maximize efficient flow of information within the State Board and for the public. We are developing a new, web-based system for campaign finance disclosure to make it easier for treasurers to file, and for the public to review, the reported information. The State Board is also working with county boards and their system vendors to develop a way to share candidate data from their internal systems with CAPAS. **It would be impossible to proceed with these upgrades without the requested funding.**

To effectuate new reporting requirements for paid internet digital advertisements enacted by the Governor and Legislature in 2018 (Election Law §§ 14-107; 14-107-b), the State Board was required to create a new database and publish Paid Internet Digital Advertisements by early September 2018. As a result, SBOE reassigned resources from the existing CAPAS/FIDAS project, including state and HBITS staff, to the implementation of this application in the timeframe required. This solution, however, was only a temporary measure to meet the basic requirements of the legislation. The full functionality of the database, including self-submission, automated workflow, and search capability must still be incorporated into the mainline project. SBOE is requesting from the Governor additional funds to supplement this project team to implement this functionality, as well as, regain time lost on the original project schedule due to diversion of resources for the stopgap application. While the original expected completion date of April 2019 has been impacted by this requirement, the full impact cannot not yet be estimated until SBOE is able to onboard required contract staff.

In order to continue the NYSBOE's efforts to administer and protect New York's elections services, at a minimum, we've asked the Governor that \$3,087,074 additional funds be added to the executive budget proposal during the 30-day amendment period to fund basic agency services. The NYSBOE has long had a deficit in personal service funds but was able to provide services with nonpersonal service appropriations. A reduction of this magnitude would significantly impact technology services as well as result in almost 30 percent reduction of staff – all while we work to roll out new election reform initiatives which will take state resources to support during the initial project/regulation development and implementation stages.

II. Impact of New Programs that have Passed or are Proposed

1. Programs that Affect the Statewide Voter Registration List

These programs require a change to the Statewide Voter Registration system as well as each local registration system. For those local changes to be done consistently, in the past the State has paid for those changes to ensure a uniform operation. The following would require changes to the Statewide voter registration system. No additional funds were provided to the SBOE or the CBOE's to do this.

- A. Address changes Statewide – This is a significant change to the current constitutionally mandated county registrar system under which we currently operate. This change was not on anyone's "radar" and would entail providing each county with the capability to move information from one county to the other and to provide access to the voter's history as well as a record of any changes that have occurred to the voter's address or party enrollment.
 - B. Early Voting – Counties will need to access voter history to ensure that voters who have moved and are transferring their registration only appear on the voter registration list once preventing the potential for duplicate voting.
 - C. Electronic Poll Books – Similarly to early voting, these must be configured to allow a registrant to only appear once in the statewide list and must also be connected within poll sites to allow multiple poll books to reduce voter wait times when they check in to vote. E-poll books have cyber vulnerabilities that we have not yet begun to fully assess. They would also be very expensive to implement for the counties. We estimate costs for the counties to be \$20 to \$30 million.
 - D. Pre-Registration for 16-year old's – The statewide system and the county systems need to be configured to allow the required automatic effect of the applicant's voter registration when they turn 18.
 - E. Automatic Voter Registration with the Department of Motor Vehicles and - Ensuring that all the required applicant's information to register them is collected in a secure manner is critical. We're seeing the problems California is experiencing when this is not implemented with proper resources and time.
 - F. Online Voter Registration and Agency Based Automatic Voter Registration – Every other state that has implemented this has only done it through their DMV. These would require significant changes to both the county and state-wide voter registration systems to accommodate applications from these additional sources. And the lack of an actual signature and the strong identification requirements that the Department of Motor Vehicles currently has opens the process to vulnerabilities when expanded to other agencies that don't have these safeguards
- ### 2. Programs that Impact Campaign Financial Disclosure.

These programs would have an impact on the State Board's ability to collect and disseminate information collected as part of the financial disclosure system. No additional funds were provided to the State Board to do these.

- A. Disclosure of Tax Returns by Candidates for Public Office – This would be effective immediately, although returns won't need to be filed until September of 2020, assuming there were no Special Elections for State Legislature or Statewide Office. If so, timely implementation would be problematic. This bill mandates that the candidate's failure to timely file tax returns, and consent to publicly disclose, with the State Board shall prevent candidate's name from being printed on the ballot for General Election. This raises this issue of how this impacts a candidate's access to the ballot and requires The State Board to set up system to accept and display these returns. Due to settlement of litigation with a group for the blind, all items posted on the State Board's website must be in accessible format, these postings would also have to comply, possibly complicating the process.
- B. Public Campaign Financing and Additional Campaign Finance Reforms - Effective immediately, provided, however, all affected candidates will be eligible to participate in voluntary public financing beginning with the 2020 primary election. As was done with the pilot program the legislature authorized in 2014, this entails the development of an infrastructure between the State Board and the Office of State Comptroller to ensure these funds are distributed properly.
- C. Ban on Corporate and LLC Contributions – While part of this as passed as Chapter 4 of 2019, the Governor's Article VII bill, Section F, would go further than the and ban corporate and LLC contributions but would allow them to make independent expenditures directly and contribute to independent expenditure committees. Implementation would require the State Board to develop process, procedures, forms and instructions. Also, modifications will need to be made to the State Board financial disclosure filing software, including website modifications.
- D. Prohibitions on Vendor Contributions During Procurement - This bill, effective 180 days after signed into law, would prohibit campaign contributions by persons or entities that are actively bidding on or have recently bid on any government procurement contract. This prohibition would apply to contributions made to both office-holders and candidates associated with the branch of government requesting the procurement, and the prohibition would extend until the close of the bidding period, or until one year after the final contract award for the winner. The ban is tied to an event, close of bidding or one year after award of final contract, the State Board would have no way to identify and advise committees when to comply. Implementation would require the State Board to develop process, procedures, forms and instructions. Also, modifications will need

to be made to the State Board financial disclosure filing software, including website modifications.

- E. Lobbyist Loans to Candidates - This bill would prohibit lobbyists, political action committees, labor unions, and anyone registered as an independent expenditure committee, from making loans to candidates for office or other political committees. Implementation would require the State Board to develop process, procedures, forms and instructions. Also, modifications will need to be made to the State Board financial disclosure filing software, including website modifications.
- F. Ban Political Consultants from Lobbying Certain Elected Officials - Effective 30 days after signed into law, this bill defines and requires political consultants to disclose who they are through any campaign financial filing made and bans them from lobbying. Implementation would require the State Board to develop process, procedures, forms and instructions. Also, modifications will need to be made to the State Board financial disclosure filing software, including website modifications.

3. Programs that Impact the Operation of the Election.

- A. June Primary – While there may be some savings from the combination of the two primaries. I believe the \$25 million number is wildly overstated. At best you will be “eliminating” the cost for the separate Federal primary every other year. The Federal primary is the least expensive election we have. In 2014 the Federal primary involved 28 counties and cost approximately \$6.1 million. In 2016 it involved 31 counties and cost approximately \$6.9 million. Remember this is not an annual savings, it’s every other year. Even if you average it out annually, you may be saving about \$3.5 million per year. The cost of early voting will be much more than that.
- B. Election Day Holiday - This bill would force all employers to provide at least three hours paid time off to vote. The general election day is already a holiday under state law. See General Construction law section 24. This bill would not make any state, local government, nor school close. It doesn’t solve the problem of providing secure access to schools as poll sites.
- C. Upstate Primary Voting Hours - Adds unfunded costs to those counties to expand their primary hours. This changes the traditional way these hours have been determined. Counties have asked to be added or subtracted from the list as a home rule request. This takes away the home rule element.

III. Impact on Cyber Security Projects

The New York State Board of Elections (NYSBOE) executes all laws relating to elections, oversees the conduct of elections and strives to maintain citizens' confidence in each stage of the election process. In SFY 2018/19, New York State firmly committed resources to create a Secure Elections Center to protect NY's election infrastructure from cybersecurity threats. The proposed Executive 2019/20 SFY budget did not appropriate funding to continue the NYSBOE's efforts to strengthen and protect New York's elections infrastructure.

The New York State Board of Elections (NYSBOE) has been diligently working to prevent and mitigate recognized threats to our state and local election systems. The NYSBOE has been actively partnering with federal, state and county stakeholders to assess vulnerabilities, leverage resources and identify cybersecurity priorities to maintain a secure elections infrastructure.

The NYSBOE created a Secure Elections Center, (SEC) as outlined in the Governor's 2018 State of the State address and implemented a number of programs to secure New York State's election infrastructure. The SEC is active in providing both assistance and resources to our fifty-eight (58) County Boards of Elections (CBOEs). These initiatives include: uniform risk assessments; implementation of intrusion detection device systems; providing managed security services; mandating cybersecurity Security Awareness Training to all State, CBOE and IT staff associated with elections infrastructure; and providing the first in the nation, six regional elections-specific tabletop exercises targeted to test response. As a result of the tabletop exercises, the SEC implemented a mandatory cyber incident reporting procedure. The services procured and implemented are planned to secure our infrastructure through the 2020 presidential election.

In 2018, seven CBOES reported cyber incidents which required extensive State resources to mitigate and recover. While the boards of elections were not specifically targeted in these incidents, their connection to the state infrastructure were none the less impacted in every case. Based upon intelligence reports, we project the occurrence of similar cyber incidents to increase leading to the election cycles in 2019 and 2020.

Going forward, we are engaged in future initiatives such as researching the utility of artificial intelligence to monitor transaction history and in examining how best to design election infrastructure. As a result of these efforts, New York State is positioned as a national leader in election cybersecurity efforts.

Please understand that the State Board has undertaken the task of doing county-wide assessments that in most instances include all county services, not just the board of elections, because the systems are intertwined. The results of the uniform County risk assessments are expected by March 31, 2019. These results will highlight county and election infrastructure vulnerabilities and will require significant mitigation services. As the budget currently stands, NYSBOE does not have the financial resources required to provide those services.

We have urged the Governor to provide a steady, reliable stream of cybersecurity funding and appropriate a new \$5 million allocation for continued elections security in SFY 19/20.