



James A. Walsh
Co-Chair
Gregory P. Peterson
Commissioner
Todd D. Valentine
Co-Executive Director

State of New York
STATE BOARD OF ELECTIONS
40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2108
Phone: 518-474-8100 Fax: 518-486-4068
www.elections.ny.gov

Douglas A. Kellner
Co-Chair
Evelyn J. Aquila
Commissioner
Robert A. Brehm
Co-Executive Director

The Moreland Commission

Hearing on Campaign Finance Reform

October 28, 2013

New York State Board of Elections

Robert A. Brehm, Co-Executive Director
Todd D. Valentine, Co-Executive Director
William J. McCann, Deputy Enforcement Counsel

I. Introduction

One of the areas that the Moreland Commission on Public Corruption is tasked with investigating is:

“Campaign financing including but not limited to contribution limits and other restrictions; disclosure of third-party contributions and expenditures and the effectiveness of existing campaign finance laws;”

It’s important to not only understand what those existing laws are, but also the reason why they were enacted and how they have been implemented.

Article 14 of NYS Election Law contains provisions regarding campaign financial disclosure. It was enacted for several public policy purposes, including ensuring transparency of election funding, which allows for an informed electorate. This transparency enables the public to be informed on who is raising or spending money in connection with the election of any candidate; ballot proposition or political party. Disclosure also allows the public to see who is contributing to candidates and political committees, which assists NYSBOE, the public, media and groups like NYPIRG, Campaign Finance Institute and Citizens Union in determining whether or not applicable contribution limits have been complied with.

The existing financial disclosure system in place is composed of two primary parts - the treasurers of the various committees who report the information; and the State Board of Elections, which functions as both the repository and the publishing house for this data. Treasurers, despite often taking on such a responsibility as a campaign volunteer or being a local candidate themselves with no previous accounting experience, are faced with ensuring that the information that they are reporting is accurate and timely. The State Board of Elections has been constant in its efforts to facilitate not only the collection of accurate campaign finance information through compliance with disclosure requirements, but also ensuring that the public have access to this information in both a prompt and practical manner.

The efforts to this end have largely been carried out by the Board’s Campaign Finance Unit. The primary objective of this group is to foster compliance with the campaign financial disclosure laws through assisting treasurers and candidates in understanding how the law affects them, and with the filing process as a whole. In addition, they review the information submitted by treasurers, undertake audits to determine where compliance has not been met and take the necessary steps to attempt to bring committees into compliance. If these efforts to promote accurate disclosure are unsuccessful, the Board then takes the necessary steps, as allowed by statute, to bring lawsuits to get missing filings and if need be to refer such non-compliant committees to the appropriate District Attorney.

The main objective of this unit has been and continues to be compliance and disclosure, and to that end, the Campaign Finance Unit of the State Board stands behind its demonstrated record of facilitating a high rate of disclosure, where non-compliance with the law is the exception and not the rule. This reality is furthered by the fact that identification of non-compliance of candidates and committees by many of

the groups advocating for reforms is only made possible by the work of our Campaign Finance Unit and the information that the State Board publishes.

Through additional legislated responsibilities, increases in filers served and changes in technologies over the past almost four decades, the State Board has continually striven to meet the challenges it has faced with the resources it has been given. We are confident that we can continue our record of facilitating a high rate of compliance with campaign finance disclosure laws by those who file with us, continue to provide the public with the information received from those filers and that with additional resources, accomplish even more.

II. New York State Board of Elections – Administration & Resources:

Agency Information and Structure

Created in 1974, the New York State Board of Elections is vested with the authority and responsibility for the execution and enforcement of all laws relating to the elective franchise. (Chapter 604 of the Laws of 1974). This includes reviewing the practices of all 62 county boards of elections; regulating access to the ballot for state offices; approving voting systems for use within the state; maintaining the statewide voter registration database; disclosure and enforcement of campaign financing and practices; implementing various federal voting programs; and the promotion and maintenance of citizen confidence and full participation in the political process of our state.

The Board's current staff of 57 is overseen by a bi-partisan managerial structure and broken into 7 units:

- Executive Unit
- Counsel
- Election Operations
- Public Information/NVRA
- Campaign Finance and Enforcement
- Information Technology
- Administration

Please see **Appendix A - Agency Structure** for additional information.

The State Board currently accomplishes its mission and tackles its increasing responsibilities resulting from new or changed legislation on both the State & Federal levels with both a budget and staffing level which has decreased or remained flat over the past 6 budget cycles. The Board's current budget appropriation of roughly \$5.3 million and staffing authorization for 58 Full-Time Equivalents (FTEs) appears inadequate when compared to other states. For example, the Wisconsin Government Accountability Board, the elections agency for a state with a population almost one-fourth the size of New York, has a slightly larger budget of \$6.5 million with an almost identical staff size. The State Board

of Elections of Illinois, a state with roughly 7 million fewer residents, not only has a larger staff (77), but also an annual budget of \$13.4 million, more than two and a half times than that of the New York State Board of Elections. Despite this lack of resources, the New York State Board works diligently within its available budget to address its core responsibilities as described in the following sections.

Primary Activities and Responsibilities of the State Board

County Board Oversight

The State Board must be in contact with each of the State's 62 county boards of elections and their respective legislative bodies. This is done through regular semi-annual meetings, monthly conference calls and on-site visits. Since every political subdivision of New York State relies on the advice and expertise of the personnel at the State Board, the staff must be accessible and well trained to ensure that the impact the Agency has on the public is a positive one. Since 1974, the scope of the State Board's services has expanded from an advisory capacity to a positive, collaborative and proactive program.

The State Board has multiple missions for which it is responsible, one of which is the critically essential board review program. The State Board conducts operational reviews of all county boards of elections, and does so via a two-year schedule of on-site visits.

The agenda for county board visits includes the review of procedures and processes for conducting elections, the organization of the board itself, staffing, document storage and retention, training efforts, problem resolution, and issues of special interest or concern to either the State Board or the county board. Standard board reviews also include a review of the implementation of and security for voting systems and ballot marking devices and corresponding training and education initiatives. These reviews also cover asset management confirmation including the physical inspection of each county's voting system service center, the review of procedures and records related to the conduct of required periodic preventative maintenance tasks, election configurations, and pre- and post-election testing, audits, and associated tasks.

Compliance with Federal Programs

The federal government continues to create or enhance election-related requirements, and as a result, puts an increased burden on states regarding select aspects of the elections process. These programs have come in the form of the National Voter Registration Act (NVRA); the Help America Vote Act (HAVA), and the Military and Overseas Voter Empowerment Act (MOVE).

The National Voter Registration Act (more commonly known as the "motor voter law") (42 USC secs 1973gg to 1973gg-10,) was a ground-breaking act that required states to establish and oversee a program to have state agencies provide broad opportunities for persons to register to vote. The State Board, through the gubernatorial designated Chief Election Official, is responsible for designating new sites that agencies use and collecting data from each site on a periodic basis.

The Help America Vote Act of 2002 ((42 USC sec 15301 ff), requires significant changes to the way New Yorkers cast their ballots and is impacting each and every aspect of election administration policies and procedures previously in place in New York. To implement HAVA, the State Legislature made a number of amendments to New York State law which among many changes, required the acquisition of new voting equipment which is enhanced in such a way as to make the new systems accessible to voters with disabilities, and the creation of a statewide voter registration list (See Chapters 181 and 24 of the Laws of 2005).

The scope of the HAVA agenda is tremendous, and included the certification, acquisition, acceptance testing, deployment, education and training and use of optical scan voting systems throughout New York, which culminated in the replacement of all mechanical lever voting systems in 2010. The focus now shifts to the support and monitoring of over 17, 500 pieces of voting equipment, the creation and implementation of dozens of new procedures and the adoption of many new policies. The State Board is fully committed to compliance with all aspects of HAVA, though this charge is a complicated and arduous one. At present, the State Board is under a federal court order which requires that in addition to full compliance, the State is required to report on the achievement of specific milestones, pursuant to the adoption of a strict timetable which is overseen by the United States Department of Justice.

While HAVA provided initial and significant federal dollars for the acquisition of new voting equipment, creation of a statewide centralized voter registration system, and enhanced voter-education and poll-worker training. As these funds are depleted, these additional and new responsibilities belonging to the State Board of Elections must be funded with State monies. The added requirements and responsibilities cited herein mandate changes to existing personnel levels and the acquisition of technological tools to help us meet the State's HAVA obligations.

The Military and Overseas Voter Empowerment Act ((42 USC secs 1973ff to 1973 ff-7), passed in late 2009, requires all military and overseas voters to have their ballots transmitted to them no later than 45 days prior to an election for federal office, and those ballots must now be accessible through an electronic delivery system. In 2010, in conjunction with the Department of Defense's Federal Voter Assistance Program, the State Board participated in a pilot program for an electronic ballot delivery system, which was successful in its efforts to serve New York's military and overseas voters.

Since then, the State Board has moved forward with this system, working to integrate best practices, along with feedback received from voters and county boards, to improve the functioning of the system and to better enfranchise the State's military and overseas voters. The on-going costs of this program will continue be borne by the State and will require significant resources.

With an ever-increasing national focus on the election process, particularly in the areas noted above, the Board is working increasingly closer with our County Boards, and Federal, State and local agencies. The State Board continues to work to develop requirements and procedures which address the new and changing needs of the electorate and the overall election process, and are creating corresponding methods of responsible and consistent implementation.

Statewide Voter Registration Database: NYSVoter

Created in 2007 in response to the federal Help America Vote Act (HAVA), the statewide database is an amalgamation of each of the county election boards' voter registration data which serves as the single, official voter registration list. Constant maintenance is necessary to ensure that this system is functioning both in its communication with each county's voter registration system and in its coordination of list maintenance activities between boards of elections.

In response to the requirements set forth by the Military and Overseas Voter Empowerment (MOVE) Act, the State Board has coordinated with county boards, their voter registration system vendors and technical staff to facilitate changes to the way that county systems share data with NYSVoter in order to streamline the processes involved in compliance with the law. Beginning in 2012, the State Board has also made modifications to NYSVoter to integrate more closely the online system used for transmitting ballots electronically to military and overseas voters and to allow them to track the status of their ballot throughout each applicable election. The changes made to NYSVoter have also helped the State Board in its compliance with federal reporting requirements.

Like all aging information technology infrastructure, NYSVoter is facing critical hardware and software obsolescence in the near future. The NYSVoter system hardware and software were deployed in 2007. The components will all be seven years old in 2014. The hardware and software will soon be obsolete. The hardware and software are approaching or in some instances, have reached end-of-life. The hardware maintenance is no longer available, or requires expensive maintenance contracts. The software is built using a database that will be unsupported after April 2016. While the State Board has been able to replace the failed parts so far, eventually it will not be able to get replacement parts that are compatible with the current system.

The software that is utilized as the foundation for NYSVoter is also at the end of the support life cycle. The State Board expects to complete the "NYSVoter Refresh" project by April 2016. This project will address the concerns for the current NYSVoter system's obsolescence. This is a two-year project that will update the system and allow it to continue to function. The project requires \$4.5 million to complete and it has been submitted as high priority to the NYS Office of Information Technology Services General Government Cluster and Division of Budget to request for the needed resources.

Data Collection from County Boards of Elections

As part of their compliance with Chapter 505 of the Laws of 2010, county boards are required to file copies of surveys showing the accessibility for persons with disabilities for each of their poll sites with the State Board. In order to track the survey and accessibility information, both current and historical, supplied to the State Board for each of the almost 7,000 poll sites, the State Board worked to develop a system to allow for the organized storage and retrieval of such information. In addition, the ability for counties to transmit future accessibility information and surveys to the State Board has been integrated into their access to the NYSVoter system.

Chapter 334 of Laws of 2013 requires that local election results not only be posted to county board websites, but these same results are required to be sent to the State Board. Therefore, the State Board is creating a system which will accept these imported results and make them available on the State Board's website. The collection of extensive technical data has begun, which will help move this process forward, however all that remains to be done to ensure a successful project will require that sufficient resources be dedicated to same. These resources will include the hardware and software decisions resulting from the Board's pilot project, and the dedication of staff resources to implement same.

Ballot Access

The State Board is responsible for overseeing the access to the ballot for all statewide offices (President, United States Senate, Governor, Attorney General, Comptroller) as well as all other state and federal offices (Congress, Senate, Assembly, Justice of the Supreme Court) which cross county lines. The State Board is also the filing location for a number of documents related to political party positions (State Committee members, Delegates and Alternate Delegates to Judicial Conventions and Delegates and Alternate Delegates to Presidential Conventions). These activities require temporary/seasonal staff to ensure that while permanent staff is conducting the agency's tasks requiring subject matter expertise, there will be sufficient staff to ensure the accurate and efficient performance of all ballot access tasks.

The federal court has ordered New York to hold any primary for federal offices in June, in order to comply with the federal MOVE Act, which requires military voters and US citizens living abroad receive their ballots in a timely manner which would allow them to participate in all elections for federal offices. Consequently, an additional cycle of ballot access tasks, corresponding training and support efforts, and other aspects of conducting an election have been interjected into the traditional even-year political calendar.

Campaign Financial Disclosure and Enforcement

This area has two focuses: The collection and public dissemination of campaign financial disclosure reports and the investigation and enforcement of election law violations. Until 1999, campaign financial disclosure reports made at the State Board were done on hardcopy, paper filings. Since then, the State Board has implemented an electronic filing system and has made those reports publicly available through the State Board's website.

Since this area of the State Board's responsibilities is of particular interest to this commission, much greater detail with regard to the Board's procedures and activities has been provided in a subsequent section.

Managing the Distribution of Federal Assistance

The Omnibus Appropriations Act for Fiscal Year 2008 (Public Law 110—161) and for Fiscal Year 2009 (Public Law 111—8) included \$215 million to help states improve the administration of Federal elections. These funds are required payments and are disbursed after the State has met the conditions for receipt of the funds, which are set forth in Section 253 of the Help America Vote Act. The amount of funds distributed to New York including requirements in 2008, a payment of \$7,498,510 which requires

a five percent match of \$394,658; in 2009, a requirement payment of \$6,520,442 which requires a five percent match of \$343,839; and in 2010, a requirement payment of \$4,564,310 which requires a five percent match of \$240,229.

Guiding the Electoral Process through the Storms

In each of the past two years, the election cycle has been threatened by natural disasters. In 2011, the effects of Hurricane Irene and Tropical Storm Lee resulted in heavy flooding throughout many parts of New York State, just prior to Primary Day. The aftereffects of these storms significantly impacted election preparation in Broome, Delaware, Greene, Montgomery, Schenectady and Tioga Counties. In 2012, much of the downstate region was hit hard by Hurricane Sandy, resulting in widespread power outages and displacement of voters and election workers. In both instances, the State Board helped to coordinate the efforts and resources of State & Federal Emergency Management agencies, utilities, media and County Boards of Elections to ensure that all scheduled elections were carried out as best as possible under those extreme conditions.

Continuing to Do More With Less

The New York State Board of Elections has worked diligently to embrace each of the new programs it has faced. It is recognized on the national level as a leader in the voting system certification arena, and in enhancing the participation of eligible voters to the elective franchise. It remains committed to providing transparent, accessible and accurate elections.

III. New York State Board of Elections - Overview of Enforcement - Campaign Finance:

United in Our Efforts to Ensure Equitable Enforcement of New York State Election Law

The State Board has continually strived to be fair, consistent and diligent in its efforts to enforce the Election Law. Contrary to the often disingenuous criticisms which target us, the State Board is not a fractured entity, but rather a cohesive agency, working under bipartisan leadership, which undertakes a comprehensive program towards the administration and oversight of Campaign Finance and Enforcement, despite a well-documented lack of adequate staffing and resources.

Additionally, the State Board's bi-partisan structure has often been falsely criticized as one which inevitably leads to perennial gridlock, something which could not be further from the truth. The reality is that the State Board has not split a single time on an enforcement matter during the specific period of time being examined. However, the absence of gridlock at the Board on enforcement matters extends well beyond that period. In the politically charged environment of elections, enforcement must take place in a bi-partisan structure to maintain faith in the results as fair.

Disclosure of Campaign Contributions and Expenditures Has Remained One of the Highest Priorities for the State Board

The primary purpose of the State Board's Campaign Finance Program (CFP) is to facilitate disclosure in order to provide for an informed electorate. Towards this end, the State Board has implemented an extensive program to facilitate the timely and accurate filing of campaign financial disclosure reports. The State Board makes this information available to the public through its interactive website, annual publications and fulfillment of information requests.

In 2005, the State Board's CFP facilitated disclosure for approximately 1,500 registered and active filers. That same year, the State Legislature mandated the extensive expansion of the electronic campaign finance disclosure program to require candidates and committees for local elections that raise or spend more than \$1,000 in a calendar year (or who have the expectation to do so), to file their campaign finance statements, in electronic format, with the State Board (Chapter 406 of the Laws of 2005).

Under these legislative changes, the number of filers, and all related filings, which are overseen by the Campaign Finance Program, has steadily and significantly increased. The total number of active filers at the end of 2012 was approximately 12,500 – representing more than an 800% increase. Last year, those filers made 29,720 individual financial disclosure reports to the State Board, all of which were posted online for anybody to review. As of mid-October of 2013, the number of active filers has now risen to over 14,000.

In line with these numbers, the Board has also experienced a significant increase in the associated costs of running the Campaign Finance and Enforcement programs, including, but not limited to, education and training of filers, mailings (paper, envelopes, printing and postage), together with increased process serving fees necessary for enforcement.

Organization and Staffing for Campaign Finance and Enforcement

Our Campaign Finance Enforcement Unit currently has a staff of 17 people. However, we also have 19 vacant positions in that unit. When the Legislature increased our responsibilities in 2005, no additional funding was provided to handle the increased workload initially. Starting in Fiscal Year 2007-2008, they did provide for 21 additional exempt class positions for the Board to address the increased number of filers coming into the program. The Board did move forward with developing a proposed structure for the new positions, with titles, responsibilities and qualifications (see **Appendix B - 2007 Enforcement Synopsis Memo**). Upon Civil Service and Division of Budget approval, the Board proceeded with the filling of 13 of the new positions. However, that process was interrupted shortly thereafter when a hiring freeze was implemented and the funding for the unfilled positions was eliminated the following year. The Board's hiring of more than half of the allowed staffing increase before the hiring freeze was instituted stands in direct contravention to what has been incorrectly characterized as a lack of will or action on the part of the State Board to fill any of the appropriated positions.

There are currently 18 vacant staff positions in the Campaign Finance Unit which are described below:

- Associate Counsel (2 positions) – Salary Grade M2 MC (range \$74,210 to \$93,803)
- Sr. Investigator (3 positions) – Salary Grade SG-22 PEF (range \$63,041 to \$79,819)
- Confidential Auditor (6 positions) – Salary Grade SG-18 MC (range \$47,952 to \$59,504)
- Campaign Finance Trainer (1 position) – Salary Grade SG-23 MC (range \$61,993 to \$77,454)
- Agency Program Aide (4 positions) – Salary Grade SG-13 CSEA (range \$40,903 to \$49,821)
- Confidential Aide (1 position) – Salary Grade SG-12 MC (range \$36,106 to \$45,466)
- Clerk II (1 position) – Salary Grade SG-9 CSEA (range \$32,653 to \$40,136)

Since that time, the State Board has repeatedly requested both the authorization and budget resources to fill all of those vacant positions, as evidenced in our annual communications to the Division of Budget (see **Appendix C - State Board Budget Side Letters**).

The administration and implementation of campaign finance disclosure and enforcement by the State Board is negatively affected by its under-resourced status. This becomes even more apparent when compared to other relevant agencies. To this point, the Board has 17 campaign finance/enforcement Full Time Equivalent (FTE) staff that serviced nearly 12,500 registered candidates and committees for their compliance with the Election Law. The budget to support this was just over \$1 million. The Federal Election Commission employed 375 FTE to administer 14,447 registered committees and the public financing for presidential campaigns and party conventions for the 2011-2012 federal cycle, on a budget of \$69.4 million. For 2013, the NYC Campaign Finance Board employs 89 FTE, with a budget of almost \$72 million (approximately \$51 million of public financing money, \$11 million for administration and \$10 million for their voter guide) to administer roughly 560 registered committees for campaign finance compliance, and to administer their public financing program.

The following table comparing the administration resources our program to other similar programs provides a stark illustration of just how under-resourced the State Board’s Campaign Finance Program really is:

	Staff	Filers	Budget	Ratio of Filers/Staff	Budget by Staff	Budget by Filer
<i>Federal Election Commission</i>	375	14,447	\$70 million	39 to 1	\$186,667	\$4,845
<i>NYC Campaign Finance Board</i>	89	560	\$11 million	6 to 1	\$123,596	\$19,643
<i>NYS Board of Elections Campaign Finance Unit</i>	17	14,099	\$1 million	829 to 1	\$58,823	\$71

As you can easily see, not only does the State Board’s Campaign Finance Program pale in comparison to the staffing resources of the other agencies, the budget for the Board’s CFP breaks down to only \$71 per

filer per year. This statistic, when compared to the FEC's figure (more than 68 times smaller) or that of the NYC Campaign Finance Board (more than 274 times smaller) is an undeniable illustration of the lack of the resources that the Board has to administer its CFP and enforce Election Law violations. Using the NYC Campaign Finance Board as a model for "adequate" resources and applying the ratios of staff to the number of offices overseen, the State Board would require a total of 190 staff and a budget of over \$11 million. If the staff-to-campaign ratio is applied instead, the State Board would require a staff of 335 and a budget of over \$20 million.

	Total Staff	Total Budget
<i>NYS CFP - Current Agency Resources</i>	57	\$ 5,300,000.00
<i>NYS CFP - Using NYC CFB Offices/Staff Ratio</i>	190	\$ 11,337,000.00
<i>NYS CFP - Using NYC CFB Campaigns/Staff Ratio</i>	335	\$ 20,165,000.00

For a more detailed projection of needed State Board resources based on the NYC CFB model, please see **Appendix D**. The analysis, both in the above table and the referenced appendix, is based on the 2009 NYCCFB Administrative Report, the most recent report/year available for a city-wide election cycle. The analysis looks at 5 critical units in the CFB and examines the staff ratio against either the number of offices in the New York City system or the number of campaigns. It also assumes that the ratios in these critical areas are optimal and should be maintained at any similar state-level entity administering a publicly financed campaign system.

In addition to the significant responsibilities tasked to the State Board as a result of the Legislature's actions in 2006, newer legislation, Chapter 399 of the Laws of 2011, has now imposed an additional enforcement mandate relative to any person who fails to file three financial disclosure reports in an election cycle for such term of office. This new mandate will stretch taxed resources even thinner, and will increase the costs incurred by the Board due to the additional lawsuits required.

The 17 current staff members of the Campaign Finance Program at the State Board are divided into 4 sub-units as described below:

Intake/Processing (5 staff) - responsible for the intake and processing of the all registrations, resignations and terminations received relative to the all of the filers within the State Board's CFP. In 2012, this group:

- Handled the paperwork for more than 12,500 filers
- Processed 28,906 pieces of mail
- Oversaw the processing of 29,720 individual campaign finance disclosure reports
- Registered 1916 new committees

- Terminated 1660 committees
- Received 13,056 phone calls from filers (the bulk of which was handled by 3 of the 5 staff members)

Audit/Review/Investigations (4 staff) - responsible for undertaking the audit and review of filers, as well as undertaking comprehensive reviews of Corporate over-contributors, and other systematic reviews, including facilitating the correction of negative balances, address corrections, and other reporting/filing deficiencies. Since 2008, this group has:

- Reviewed over 100,000 entities from contribution records to identify potential corporate over-contributions
- Contacted 1,849 potential entities to ensure corporate status and accurate reporting.
- Identified over 400 entities (more than 20%) which were incorrectly identified as corporations
- Through outreach, brought 1,231 of the remaining corporate entities into compliance (an 85% compliance rate)
- Conducted more than 2,100 audits on Statewide and State Legislative committees for over contributions
- Through similar efforts as with the corporate over-contributions, attained an better than 95% compliance rate from these committees

The following tables show the various audits performed by this unit, the committees examined and resulting compliance rate since 2008:

CORPORATE OVER CONTRIBUTION AUDITS							
YEAR	TOTAL ENTITIES IN MASTER FILE	TOTAL AMT CNTRBD	ENTITIES CONTACTED	REMOVED	CORPS REMAINING	NON COMPLIANT	COMPLIANCE RATE
2008	27,068	Total not available	464	52	412	40	90.29%
2009	25,991	\$ 24,486,246.00	382	97	285	35	87.72%
2010	24,175	\$24,408,060.00	382	103	279	68	75.60%
2011	23,038	\$ 23,117,060.00	324	57	267	43	78.61%
2012	20,556	\$ 19,932,847.00	297	94	203	31	83.25%

LEGISLATIVE OVER CONTRIBUTION AUDITS						
YEAR	COMMITTEES AUDITED	CMTES RCVD O-C LTRS	CMTES RMVD	COMPLIANT	NON COMPLIANT	COMPLIANCE RATE
2008	654	67	N/A	63	4	94.03%
2010	730	97	26	65	6	91.54%
2012	715	99	13	72	14	audit nearing completion

STATEWIDE OVER CONTRIBUTION AUDITS						
YEAR	COMMITTEES AUDITED	CMTES RCVD O-C LTRS	CMTES RMVD	COMPLIANT	NON COMPLIANT	COMPLIANCE RATE
2010	55	13	7	6	0	100%

Education, Outreach and Training (3 staff) - responsible for the administration of the comprehensive campaign finance outreach and training program conducted by the State Board and mandated by the Legislature's changes in 2006. Annually, they travel throughout the State, conducting seminars for filers and the public, offering Continuing Legal Education (CLE) on campaign finance, and Training Sessions with local Boards of Elections, both individually, as well as regionally in groups. Highlights of this group's activities include:

- Training County Board of Elections staff
- The updating of the various campaign finance brochures, as well as the Campaign Finance Handbook, which is a comprehensive 130 page publication available on the State Board's website
- Conducting 127 training sessions over the past six years in 44 counties and in NYC which provided training for over 3600 attendees
- Since offering CLE certification training starting in 2012, 110 attorneys have received credit

Enforcement (5 staff) - Comprised of the Enforcement Counsel (vacant), Deputy Enforcement Counsel, 2 Enforcement Specialists, and 2 support staff (clerk and secretary) – responsible for oversight and operation of the unit and the State Board's campaign finance and enforcement program. This group:

- Processed hundreds of complaints received of potential violations of the Election Law
- Reviewed complaints to identify whether an actual violation of Election Law is alleged
- Make proposed determinations based on information collected by staff and/or State Police
- Bring complaints before the Board for final determinative action.
- Execute all enforcement actions (lawsuits) for failure to file

The Enforcement Actions of the State Board Has Produced Demonstrable Results

With every action we take, our end goal continues to be the disclosure of campaign finance information. We have been successful in our efforts, resulting in significant compliance with disclosure requirements from the vast majority of our filers. For each mandated filing, we notify all those who failed to make the filing. While this has been derided by some as “enforcement-by-letter” the results of this mandated process prove its efficacy. In addition, the diligent efforts of the Education, Outreach and Training Unit should also be recognized for their facilitation of informed filers who continue to show that compliance is not the exception, but rather the norm.

The following statistics provide information as to the totality of enforcement activity undertaken during the 6 year period 2007-2012. During that six year period, there were 632 complaints received. 704 complaints were processed to a final decision by the board. The latter number is larger because the two numbers are independent of each other, so there may have been complaints received prior to 2007 that were processed to a final decision subsequently. Many complaints are closed without requiring formal investigation by the board as they prove to be unsubstantiated, do not allege actual violations of any law, allege violations of other laws that are not within our jurisdiction or, while may involve technical violations of the Election Law, internal review indicates that the violations are either minor in nature, do not rise to the level of a criminal violation and/or have been rectified. As for referrals to the District Attorney, 308 corporate over-contribution referrals made along with 1,402 non-filer referrals by the board during that six year period. Further enforcement actions taken by the board have resulted in obtaining 4,425 judgments during that time period and the collection of almost \$400,000 in penalties. The table below shows the enforcement actions taken in each year of the period described above.

	2007	2008	2009	2010	2011	2012	Total
Total Filers:	8,860	9,141	10,950	11,007	12,319	12,500	
Complaints Opened:	165	108	204	65	54	36	632
Processed to Determination:	47	73	370	98	56	60	704
Opened Investigations:	2	3	6	1	0	1	13
Corporate Referrals to DA:	26	35	112	61	43	31	308
Non Filer Referrals to DA:	187	265	202	262	204	282	1,402
% Non-Filers of Total Filers:	2.11	2.9	1.84	2.38	1.66	2.26	2.16
Lawsuits:	3	7	3	7	3	6	29
Judgments Obtained:	491	869	787	861	792	625	4,425
Judgments Satisfied:	122	215	275	239	252	245	1,348
Amount Collected:	\$30,498	\$68,623	\$77,505	\$84,732	\$66,356	\$59,416	\$387,130

** The 2013 January Periodic covers the end of 2012's activity. The number of corporate referrals for that specific filing has not yet been finalized, but preliminary numbers have been used.*

The following sections provide further detail and clarity as to the comprehensive nature of the enforcement actions taken by the State Board’s Campaign Finance & Enforcement Unit:

Failure to File

When a candidate/committee fails to file a required report, three steps are done to enforce compliance:

1. Late Notices are sent to the filer to seek to notify the treasurer and candidate that the filing is late
2. Special Proceeding by Order to Show Cause is brought against the filer if they have failed to file, seeking disclosure and subjecting the committee to a fine of up to \$1000
3. Judgment is rendered against any committee that fails to heed to the Court's order compelling disclosure. The judgment is filed in Albany County Clerk's Office. Subsequently if filing is still not received, we file judgment in the home county of the treasurer subjecting their property to a lien. If filings are not ultimately made, the State Board will then refer the non-filers to the Albany County District Attorney's Office for prosecution, per the Election Law.

As the State Board has no prosecutorial powers, it would be the County District Attorney being referred to that would move forward with any further action. A significant factor to be considered in the referral process for non-filers, is that the Election Law makes no further work necessary to determine a knowing or willful action by the referred since Section 14-108 (5) states:

"Failure to file within five days of receipt of such notice shall constitute prima facie evidence of a willful failure to file."

It has been characterized by some that District Attorneys are being asked to do the Board's work, but the above statutory language dispels such a misrepresentation.

The following is a summary illustration of the above-described enforcement activities by the Board for the non-filing of disclosure reports. In 2012, a State Legislative year, the Board:

- Issued late notices to 5,094 filers
- Sent 13,222 individual pieces of mail by certified and first class mail (sent in combination to Treasurers and Candidates).
- Sued a total of 1,239 filers
- Took 654 judgments.
- Made 282 referrals to the Albany County District Attorney for this filing period, bringing the number of referrals for Non-Filing made to the Albany County District Attorney for prosecution to a total of 1,402 since 2007.

Chapter 399 of Laws of 2011 also created new enforcement mandates related to non-filings. Any person who fails to file financial disclosure reports 3 times in an applicable election cycle for such term of office may be sued and fined up to \$10,000. We are in the first stage of the three stage enforcement proceeding, so statistics are not yet available on this new process.

Corporate Over-Contributors

Four steps are undertaken to enforce this aspect of the Election Law:

1. Data Review: Audit and Review sub unit compiles data of corporate contributions from filings made with the Board.
2. Correspondence and Follow-up: After assessing to determine the specific corporate entities, correspondence is prepared and submitted to the corporations in question seeking response. If it is determined that a corporation did actually over-contribute, the corporation is directed to mitigate the error by seeking refunds and proving such.
3. Board Review
4. District Attorney Referrals: In the event that mitigation does not occur, the Board then refers such corporations to the appropriate county district attorney for prosecution.

Specific to 2012, Audit initially reviewed 297 entities which were potentially corporate over-contributors, of which 94 were removed as it was determined they were not corporations. Such determination is based on time-intensive research performed by the Audit Unit. The remaining 203 corporations were then audited to determine if in fact they over-contributed. These corporations were issued letters for response. Subsequently, 172 came into compliance because either: it was determined that they were not corporate entities; the contributions were misreported by the recipient filer; or the over-contributions were refunded. A total of 31 remaining corporations are identified to be presented to the board for possible referral to the appropriate District Attorney for prosecution, pending final review by Counsel. 308 corporate referrals have been made to a District Attorney for prosecution since 2007.

Limited Liability Corporations (LLCs)

While discussing enforcement actions taken against corporate entities, a review of policies covering and the treatment of Limited Liability Corporations should be presented. LLCs are creations of state law and have been endowed with some of the characteristics of corporations and some of the characteristics of partnerships; yet they are neither corporations nor partnerships, nor are they trusts. New York State's Limited Liability Companies law makes it clear that LLCs are not business corporations, but are defined specifically as "unincorporated business organizations"(NYS LLC law section 102(m)). As such, the State Board in 1996 determined that LLCs are not subject to the corporate contribution limits of Article 14.

The definition further distinguishes LLCs from partnerships and trusts, thereby removing them from the operation of any restrictions, regulations or requirements relating to those kinds of business organizations. The State Board, in that opinion, went on to review the law and the Federal Election Commission's determination at the time and concluded that the individual limit is the only applicable limit under Article 14 of the Election Law.

Counsel's office at the State Board reviewed the issues again in 2001 and concluded that since the New York State law had not changed the definition of LLC, they would still be treated as an individual for Article 14. Any change to the treatment of LLCs under Election Law would require a legislative change. There have been numerous bills put forth in both houses of the Legislature, as well as in a Governor's Program Bill, to close what is often referred to as the "LLC Loophole" but to date, no proposed

legislation has been adopted. Until such change takes place, the State Board will continue to operate under the same procedures for LLCs as it has been.

Formal Complaints

The actions of the State Board's Enforcement Unit go well beyond just campaign finance disclosure. The unit is also tasked with reviewing all received formal complaints. Over the past six years, the Board has received, on average, more than 100 formal complaints each year. Because of the partisan nature of politics, we do not accept anonymous complaints.

When a complaint alleging a violation is made, it is reviewed to ascertain that the conduct complained of would, if true, be a violation of Election Law, and that there is evidence to support it. Counsel examines the nature and scope of the alleged conduct, and recommends an appropriate disposition of the complaint to the State Board's Commissioners. Among other things, that can include: a letter of admonition and correction to the respondent, referral to the Election Operations Unit of the State Board for follow-up with the local board of elections, instructions to the respondent to make additional disclosures, referral to the Audit Unit for further review or a recommendation to dismiss the complaint for lack of merit. The vast majority of complaints are for minor violations of the Election Law, which can often be addressed with outreach and instructions for corrective actions given to the respondent.

Although many of the actions described above are investigatory in some respect, if a complaint is substantive and alleges a serious violation of the Election Law which could potentially result in a criminal referral, a formal investigation could be opened at the direction of the Board. Since the Unit currently has no investigators on staff, we can and have made requests for assistance from the State Police in order to conduct a formal investigation and collect additional information. Once the investigation is complete, the Enforcement Unit makes a recommendation to the State Board to make a referral to a District Attorney or other determination. In the past six years, we have opened 13 formal investigations resulting in 2 that were ultimately referred to district attorneys for prosecution. Four additional matters were referred directly to District Attorneys after an initial review determined that a formal investigation was not necessary.

IV. Outdated Technology Has Negatively Impacted Disclosure and Enforcement

The existing candidate/campaign financial disclosure database system was designed in 1994 to accommodate electronic filings made by a relatively known number of state filers, approximately 1,500. In 2006, when the Legislature opened the system up to the increased number of local filers, they did not allocate additional resources towards enhancing the technology which would need to serve this expanded group of users. The system does not meet campaign finance and enforcement requirements to support the additional number of candidates for local offices. The current system has many critical shortcomings including:

- The software must be installed on a physical computer and so both the user is limited by access to such a machine versus an access-anywhere web-based system and support is difficult

- The current versions of the software use technologies which are no longer vendor-supported or for which the State Board is presently without staff resources to implement modifications
- It is unable to maintain linked historical data on treasurer and other administrative information
- Original filings are replaced within the system by any submitted amendments
- The current system does not provide for any tools to perform audits or automatic tracking of over contributions
- It is not connected with County Board systems for election cycle and candidate information

The Electronic Filing Software system (EFS) the State Board developed to use for filing of financial reports falls far short of the mission's current needs. There are multiple areas within that dated system which fail to allow for efficient, effective filing, as well as overall incompatibilities with up to date operating systems. The State Board began a standalone project several years ago to replace this application. Although an updated version of the software was developed and is currently being used by filers, this updated version does overcome certain incompatibilities with particular operating systems. In addition, there remain deficiencies in the user interface, database architecture, and the underlying technical architecture which must be resolved.

This increasing stress of the number of active filers, together with the lack of appropriate staff and associated resources, severely and negatively impacts the State Board's ability to support an increased level of compliance with statutory requirements of campaign finance provisions including audit finance reports, review and make determinations of complaints, investigations, and ability to facilitate greater general enforcement of the mandates.

The State Board has consistently requested and argued strongly for an adequate appropriation in recent fiscal years (see **Appendix C – NYSBOE Budget Side Letters**), to enable the Board to meet its mandate of public disclosure of financial filings that accurately depict the raising and spending of money by and for candidates for public office, and to appropriately review, investigate and enforce relative to the same. Without these requested additional resources, the State Board is unable to design and develop a new, more robust system in-house or through the hiring of an outside vendor. It's for all these reasons that the Board initiated a project in December, 2012 to address the State's needs for campaign and financial disclosure management through the Office of Information Technology Services (OITS) General Government Cluster Standards as they are developed. A budget requirement of \$400,000 for 2013 project funding needed to keep the project on an 18 month schedule was presented to the OITS General Government Cluster and Division of Budget. A response was expected in the summer of 2013, but to date the issue is still pending. A total of \$2,200,000 will be needed to complete the project as designed. Please see a copy of the draft scope document previously provided to the Moreland Commission which details the project plan and the needed resources to accomplish it. However, the timeliness and success of this project is contingent upon the attention and resources that the OITS Cluster is able to provide. At present, there is no known timeframe for completion.

V. Recommendations for Improving Disclosure and Enforcement

Provide Adequate Staff for Campaign Finance and Enforcement Functions

As has been demonstrated already in the previous sections, there is no denying that the State Board's Campaign Finance & Enforcement Unit staff is woefully under-resourced, especially when compared to similar programs. At the very least, those positions which were allowed for by the Legislature when it expanded the number of filers that are to report to the State Board, should be filled immediately. As the number of filers has increased more than eightfold and subsequent legislation has mandated additional responsibilities for the unit to address, further analysis should be conducted to determine if staff increases beyond what is currently vacant are merited.

Fund Technological Improvements to Systems and Software Used in Disclosure & Enforcement

Changes in Election Law mandates, and the vastly increased number of filers of campaign financial activity reports, has led to an increased and more widespread level of review by the State Board. Because of the deficiencies in the database and electronic filing system, the State Board is unable to adequately, or in some cases at all, amalgamate information needed to effectuate reviews. In many instances it is because the system does not accommodate the filer, leading to difficulties in the review process. In other instances, the system does not allow for the generation of information in the required format. At all levels, the State Board will be best served by a comprehensive review of the agency's technological needs in conjunction with the existing system as well as with an upgraded system. An assessment to evaluate enforcement/campaign finance needs, and to develop business rules to incorporate those needs in the development of any new database and reporting system, is imperative.

Additionally, any new financial reporting system would need to link the State Board and county boards to enable capture of election data for local candidates – their names, offices being sought, the terms of and election cycle contribution limits for those offices. This capability will allow the State Board to know who is running for all of the local offices and who needs to file financial disclosure reports. The lack of this capability directly impacts the ability of the State Board to appropriately enforce filing requirements of local candidates and related political committees. Such a data management system for financial reporting needs that allows for the capture and migration of data relative to local candidates and offices from the county boards of elections to the State Board is long overdue. This system needs to be built using a platform that accommodates a variety of up-to-date operating systems.

Additionally, development of a modern web-based filing system, as opposed to a software attachment to an email, is needed for maximum efficiency and accuracy in reporting. This new system would allow for a more intuitive and functional interface to assist filers in avoiding common mistakes and omissions before the filing is submitted. It would streamline review by State Board auditing staff and would also serve as a portal where committees could access their account information and enable them to electronically amend as needed their registration documents through the use of their PIN. As mentioned, the State Board began this project in 2013, but requires additional resources to complete it.

Identify Potential Legislative Changes to Improve Disclosure and Enforcement

The following list details a number of reforms which would require legislative changes to come into effect. Such reforms could potentially improve the overall disclosure and enforcement process, but are clearly outside the authority of the State Board.

- Mandatory Training – Require training for treasurers and/or authorized representatives, starting with statewide and legislative committees.
- Mandatory attribution –Mandate attribution (e.g. “Paid for by...”). This would make it easier for auditors to identify non-filers who are active in elections
- Lower contribution limits – Lower the current contribution limits
- Institute 48-hour notices – Require 48-hour notices for contributions of \$500 or more during specific reporting periods
- County Board Coordination – Mandate that County Boards of Elections provide to the State Board information on local candidates that are running for office, the terms of such offices and election cycle contribution limits in electronic format. This would enable the State Board to know who should potentially be filing and reduce the uncertainty NYSBOE faces when investigating an issue concerning a local committee.
- Civil penalties – Allow the Board to impose administrative fines for late filings, missing data and other violations on an increasing scale based upon the severity and scope of the violations.
- Streamline requirements regarding campaign materials – Presently, the law requires that a sample of all campaign materials be mailed to the State Board which, in turn, incurs warehousing/storage costs. Changing the requirement to permit electronic submission of campaign materials will cut costs and improve compliance in this area
- Changing notice requirements for enforcement actions – No longer requiring personal service of process; allowing effective notice by the utilization of first class mail sent to the last address provided by the named defendant; and potentially allowing for notification by email to be considered when that information has been provided by the named defendant, would eliminate the extremely costly personal service fees.

APPENDIX A

AGENCY FLOWCHART

New York State Board of Elections:
Senior Management

Commissioners:
Current Fill = 4

Douglas Kellner, Co-Chair (D), Evelyn Aquila (D)
James Walsh, Co-Chair (R), Gregory Peterson (R)

Co-Executive Directors:
Current Fill = 4

Robert Brehm (D) and Todd Valentine (R)

Campaign Finance and Enforcement Unit:

Current Fill = 17 // Vacant = 19
Vacant, Counsel (D) and
William McCann, Deputy Counsel (R)

Public Information / NVRA Unit:

Current Fill = 5 // Vacant 1
John Conklin, Director (R) and
Thomas Connolly, Deputy Director (D)

Administrative Unit:

Current Fill = 2 // Vacant =1
Tom Jarose

Counsel Unit:
Current Fill = 3

Kim Galvin, Special Counsel (R) and
Paul Collins, Deputy Counsel (D)

Election Operations Unit:

Current Fill = 10
Anna Svizzero, Director (D) and
Joseph Burns, Deputy Director (R)

Information Technology Unit:

Current Fill = 11 // Vacant 7
David Loomis

APPENDIX B

ENFORCEMENT SYNOPSIS MEMO

MEMO

TO: Commissioners Kelleher, Kellner, Donohue, and Aquila.
FROM: William McCann and Elizabeth Hogan
RE: Enforcement Synopsis
DATE: November 20, 2007

This Memo contains a synopsis of the proposed composition of the Enforcement Unit based upon the addition of 21 new positions on top of the 15 positions presently within the Unit. It also contains a breakdown of Qualifications, Duties and Responsibilities of the Second Group of proposed hires.

Attached hereto is a diagram which reflects the overall Unit with 36 positions. The proposed Unit would have three specific sub-units:

- 1) Campaign Finance Intake and Processing;
- 2) Audit, Review and Investigations; and
- 3) Educational Outreach and Training.

Each of these sub-units will be tasked with specific duties and responsibilities as more fully explained below:

1) Campaign Finance Intake and Processing

This sub-unit would be made up of the present Campaign Finance Unit, consisting of 10 positions: 1 Associate Accountant (SG 23); 1 Senior Accountant (Sg 18); 6 Agency Program Aides (SG 13); and 2 Clerk II's (SG 9).

This sub-unit would be responsible for the intake and processing of all campaign financial disclosures, registrations of all political committees/candidates, applications for electronic filing exemptions, and correspondence and/or telephonic or electronic communications relative thereto. This sub-unit would also be responsible to act as the Campaign Finance Call Center, to assist filers with generic campaign finance questions, as well as assisting with questions regarding electronic and other campaign financial filing with the Board. This sub-unit will also continue to assist with educational outreach and training, on an as-needed basis.

At present, there are over 9,000 filers with the Board. The volume of filings and related documentation generated daily by these filers, which requires timely and systematic processing, is tremendous. Furthermore, the call volume generated daily by these filers is significant and will increase significantly as the number of filers increases. There is more than enough work, by time and volume, within these designated responsibilities, to keep this sub-unit actively engaged on a daily basis.

It is critical to also note that upon the development and implementation with the County Boards of the integrated system of local candidate identification and capture, it is anticipated that the number of filers with the State Board will expand greatly. We have already seen our numbers more than quintuple in less than 3 years: from @ 1,700 in 2004, to more than 9,400 to date - with what essentially amounts to an honor system.

2) Audit, Review and Investigations

This sub-unit would incorporate the audit and review function presently within Campaign Finance, together with the existing investigation function of Enforcement. It will consist of 13 positions: 2 Associate Confidential Auditors (SG 23); 3 Senior Investigators (SG 22); and 8 Confidential Auditors (SG 18).

The sub-unit will conduct comprehensive reviews of campaign finance filings by political committees and candidates, based upon criteria agreed to and established by the Board, including reviewing for completeness and accuracy. Based upon these established criteria, reviews will also include the audit of political committees and candidates as may be necessary to effectuate a complete and thorough assessment of compliance with Article 14, including contribution limits established therein. Staff will be responsible for the related communications with candidates and committees as necessary to perform these functions.

This sub-unit will assist Counsel with the analysis and review of any applicable campaign financial disclosures relative to any complaints and any subsequent investigations authorized by the Board. Furthermore, responsibility for the calculation and implementation of contribution limits shall fall within the purview of this sub-unit.

It should be noted that the implementation plan for this sub-unit calls for the establishment of 2 bi-partisan audit teams.

In line with the development and implementation with the CBOE's of an integrated system of local candidate identification and capture, each of the 62 counties will be assigned to one of the 10 Auditors. Each Auditor will be responsible, as a point person, for working with a particular county to develop a composite outline of all offices by county and each of the municipalities therein. This will include the number of office holders, terms of office and related election schedule. As part of this function, in concert with the Campaign Finance Intake and

Processing sub-unit, Auditors will be responsible for facilitating compliance by filers from an assigned county.

The investigative staff will be included in this sub-unit as part of its expanded audit and review function. Since a large segment of complaints received by the Board concern campaign finance and compliance with Article 14, there is a related cross-over of purpose and responsibilities between the pure investigative function of the Board and Audit and Review relative to Article 14. It is also anticipated that as the backlog of complaints are processed by the 2 new Counsels, the number of investigations opened by the Board will increase. With this in mind, this plan calls for the filling of the vacant Senior Investigator position, as well as the creation of an additional Senior Investigator position.

3) Educational Outreach and Training

This sub-unit will incorporate, and greatly expand upon, the educational outreach and training function presently within Campaign Finance. It will consist of 4 positions: 2 Campaign Finance Trainers (SG 23); and 2 Training Assistants (SG 18).

At present, the only educational outreach and training the Board conducts is through a limited series of campaign finance seminars during the late Spring/early Summer of each year. It has been our experience that educated filers, from both a technical and substantive stand point, create the least amount of work from an administrative perspective. Additionally, public perception of the Board and campaign finance obligations are generally improved through this outreach. In light of this experience, it is proposed that this sub-unit will engage in a significantly expanded and comprehensive program of outreach and training to include:

- an expanded schedule of campaign finance training seminars, on both a county and regional basis throughout the year. This will include seminars in the traditional model, as well as smaller technical workshops on electronic filing. Call center staff are presently burdened with lengthy calls from filers who need a higher level of assistance on technical and substantive filing concerns. This sub-unit will take these calls, freeing up the staff from the Intake and Processing sub-unit.

- the design, development and implementation of appropriate curriculum and instructional materials, including reference and training manuals, related to campaign finance registration, filing and disclosure requirements. This will include a web-based tutorial for electronic filing, as well as video and audio training sessions on campaign finance. In addition to being available on our web site, these materials will be disseminated and distributed to the county boards of elections, filers, and the public.

Special Projects, Technology, and Unit Support

There are several critical program needs that have to be addressed within the Enforcement Unit, specifically in the areas of special projects, technology and unit support. To this end, we are proposing 2 new positions, with 2 staff members per position.

Special Projects and Technology

The first position proposed is that of Enforcement Specialist (SG 25). These individuals would oversee and engage in, on behalf of the Enforcement Unit, in coordination and conjunction with the IT Unit, the comprehensive review, development and implementation of all Enforcement Unit information technology projects and other SBOE Unit related projects, including, but not limited to:

- The Financial Disclosure Database (FIDAS);
- The Candidate and Petition Administration System (CAPAS);
- The Campaign Financial Disclosure Software;
- Web-based Filing of Campaign Financial Disclosures, and web-based tutorials for electronic filing;
- On-Line Candidate and Committee Registration for Campaign Finance purposes;
- Technology aspects of campaign finance training curriculum and instructional materials, including reference and training manuals, and programs related to campaign finance registration, filing and disclosure requirements, including the dissemination and distribution to the county boards of elections, filers, and the public.

In addition to these technology functions, the Enforcement Specialists will assist in the review, development and implementation of non-technical campaign finance and enforcement projects, as well as assist with sensitive and complex audits and investigations.

Unit Support

In light of the greatly expanded size of the Enforcement Unit, and the related functions and responsibilities, there is a significant need for additional support staff. It is proposed that the position of Confidential Enforcement Aide (SG 12) be created.

These 2 staffers would be available Unit-wide for support where needed. However, with the large increase in the number of filers, and the related increase in Enforcement activities for failure to file, it is anticipated that one of these staffers would assist primarily with:

- the preparation and processing of Special Proceedings (OTSC) brought to obtain compliance with the requirements of Article 14, as well as any proceedings or activities preceding or subsequent thereto, including word processing and clerical tasks associated therewith.

- the preparation and processing of Judgements obtained by the Enforcement Unit, and subsequent proceedings or activities related thereto, including word processing and clerical tasks associated therewith.

- the intake and processing of complaints received by the Enforcement Unit, and associated proceedings and investigations related thereto, including word processing and clerical tasks associated therewith.

These Confidential Enforcement Aides would also assist with:

- the coordination and scheduling of campaign finance training seminars and other related proceedings or activities, including word processing and clerical tasks associated therewith;

- the intake and processing of campaign financial disclosures and any related items, including word processing and clerical tasks associated therewith.

SECOND GROUP OF HIRES

<u>Title</u>	<u>Grade/Salary Range</u>	<u>Quantity</u>
Enforcement Specialist	(SG 25; \$63,073 - \$79,725)	2
Associate Confidential Auditor	(SG 23; \$58,434-\$73,008)	2
Senior Investigator	(SG 22: \$55,472-\$68,267)	1
Confidential Auditor	(SG 18; \$45,199 - \$56,088)	6
Campaign Finance Training Assistant	(SG 18; \$45,199 - \$56,088)	2
Confidential Enforcement Aide	(SG 12; \$34,033 - \$42,856)	2

With the initial 6 hires, the total group would be 21. Added to the 15 current positions (14, plus one vacant Investigator position), the Enforcement Unit would comprise 36 positions in total.

The Qualifications/Duties and Responsibilities for each of the above-listed titles appears below. Those specifically for Confidential Auditor (SG18) have already been approved by the Board.

QUALIFICATIONS/DUTIES AND RESPONSIBILITIES - SECOND GROUP OF HIRES

Enforcement Specialist (SG 25) (Salary range \$63,073 - \$79,725)

Minimum Qualifications:

_____ A Bachelor's degree + six (6) years of experience in general business/management and/or enforcement management or other related experience, with an emphasis on computer technology.

Duties and Responsibilities:

The duties and responsibilities of the Enforcement Specialist, as assigned by and through the Enforcement Counsel, are as follows:

1. Oversee the development and implementation of all Enforcement Unit information technology projects including, but not limited to, the comprehensive review and modification of the Financial Disclosure database, campaign financial disclosure software, web-based filing of campaign financial disclosures, and web-based tutorials for electronic filing.
2. Oversee the development and implementation of the campaign finance curriculum and instructional materials, including reference and training manuals, and programs related to campaign finance registration, filing and disclosure requirements, including the dissemination and distribution to the county boards of elections, filers, and the public.
3. Assist with sensitive and complex audits and investigations.
4. Consult with Senior Management and assist in the development and review of Enforcement Unit policy and procedures and recommend changes where required.
5. Prepare appropriate reports pertaining to the projects engaged in.
6. Assist in the development and implementation of non-technical campaign finance and enforcement projects.
7. Assist on all tasks and matters as may be reasonably assigned by and through the Enforcement Counsel.

Associate Confidential Auditors (SG 23) (Salary range \$58,434 - \$73,008)

Minimum Qualifications:

 A Bachelor's degree + four (4) years of accounting or finance or general business or other related experience; or an Associate's degree + six (6) years of accounting or finance or general business or other related experience.

Duties and Responsibilities:

The duties and responsibilities of the Confidential Auditor, as assigned by and through the Enforcement Counsel, are as follows:

1. Supervise Confidential Auditors in the conduct and performance of their duties and responsibilities.
2. Oversee and direct to completion projects and assignments of Confidential Auditors.
3. Conduct comprehensive reviews of campaign finance filings by political committees and candidates based on criteria established by the Board through the Enforcement Counsel and the Deputy Enforcement Counsel, including reviewing for completeness and accuracy.
4. Audit the books and records of political committees and candidates as may be necessary to effectuate a complete and thorough assessment of compliance with Rules, Regulations, statutes, and Board Opinions and policies.
5. Conduct projects, including reviews for over contributions. Such projects shall include an analysis and application of appropriate Rules, Regulations, statutes, and Board Opinions and policies, and all correspondence and communications necessary to effectively complete these projects.
6. Assist the Enforcement Counsel, Deputy Enforcement Counsel, and Associate Counsel in the analysis and review of campaign finance disclosures and filings relative to complaint processing and the enforcement of failure to file with the Board.
7. Assist in the development and implementation of campaign finance and enforcement projects.
8. Assist in the calculation of contribution limits for all applicable offices based upon statutory formula.
9. Assist in the development of policy recommendations in the area of campaign finance.

10. Assist on all tasks and matters as may reasonably be assigned by and through the Enforcement Counsel.

Senior Investigator (SG 22) (Salary range \$55,472 - \$68,267)

Minimum Qualifications: Bachelor's Degree in Police Science or related field, plus a minimum of six years full-time paid experience as a Federal, State or local police officer, or investigator qualified as a peace officer, or forensic investigator (criminal/financial/technological), the majority of such time being spent in the conduct of field investigations and report preparation; or an Associate Degree in Police Science or related field, plus a minimum of eight years work experience referenced above; or a minimum of ten years work experience referenced above. Detailed knowledge of the New York State Election Law is not required, but would enhance chances for appointment, as would college level courses in accounting/finance/computer science. Experience not considered qualifying: Any/all work performed as a private security officer (armed or unarmed), corrections officer, private investigator, bank/armored car guard, or other similar employment. Also not considered qualifying is experience as a uniformed police officer the overwhelming preponderance of whose work was not in the area of criminal investigation.

Duties and Responsibilities:

Under the general and specific direction of the Enforcement Counsel and Deputy Enforcement Counsel, as may be appropriate the incumbents of these positions will perform the following duties:

1. Perform audit functions as enumerated for the position of Confidential Auditor, as directed.
2. Perform field investigations of alleged violations of the Election law, related Penal Law provisions, rules and regulations and the "Fair Campaign Code".
3. Investigate, obtain and verify facts for use at administrative hearings before the Board and in judicial proceedings in cases o criminal violations.
4. Issue and serve subpoenas and subpoenas duces tecum, administer oaths or affirmations, examine witnesses in public or private hearings, receive evidence and preside at or conduct any investigation, hearing or study pursuant to the authority vested in the New York State Board of Elections.
5. Secure documentary evidence in the form of statements, records, exhibits and other relevant material for the use in both investigations and in administrative and judicial proceedings.

6. Arrange for appearance of witnesses whose testimony is essential for hearings held before the Board and at administrative and judicial proceedings.

7. Procure warrants of arrest and cause to be taken into custody the person or persons named in such process. Make arrests relating to violations of New York State Election Law and related Penal Law provisions.

8. Review material prepared for trial.

9. Offer expert testimony at all judicial and administrative hearings, including grand jury proceedings, criminal trials, and arraignment proceedings, resulting from arrests or investigation.

10. Call on any member of local or State Police, Sheriff, or any Public Officer, or any person to assist in carrying out assigned duties.

11. Personally take charge to conduct a local board of elections investigation where the board does not have adequate personnel, or where the criminal allegation involves the local board.

12. Provide technical assistance and guidance to local county boards of elections officials relating to criminal investigative procedures, policies and techniques, and review local board investigative reports for sufficiency, adequacy and content.

13. Prepare procedural guides and conduct investigative training sessions for local boards of election personnel.

14. Secure documents and records for the New York State Board of Elections Campaign Finance Unit where a committee or treasurer fails to comply with audit request in regard to criminal allegations pertaining to filing. Have knowledge of all campaign financial disclosure sections required by the New York State Election Law. Receive criminal allegations from the Campaign Finance Unit for investigations relating to financial filings. Investigate and confirm the facts of suspected violations discovered during desk and/or field audits or financial reports, records and election results where criminal allegations are implied or are referred. Process corporate violations.

15. Inspect and copy any books, records papers or documents relating to or affecting the election or the registration of voters, or require the Board of officer in charge thereof to furnish a copy of any such record, paper, document there charged.

16. Visit and inspect any house, dwelling, building, inn, lodging house, boarding house, rooming house, or hotel, and interrogate any inmate, house-dweller, keeper, caretaker, owner, proprietor or landlord thereof or therein, as to any person or persons residing or claiming to reside therein or thereat.

17. Go within the guardrail of any polling place during any election.
18. Maintain liaison with local and federal law enforcement authorities as necessary.
19. In cooperation with local, state and federal law enforcement authorities, assist in conducting investigations.
20. Answer telephone inquiries and receive complaints from the general public in regard to alleged violations of the New York State Election Law and related Penal Law provisions.
21. Direct the review of local boards of elections records and procedures related to elections held.
22. Prepare comprehensive written reports on findings and investigations.
23. On any Election Day or Primary Day, coordinate all law enforcement activities in New York State, as well as personally investigate Election Day activities, enforcing the New York State Election law and rectifying, where possible, all improprieties.
24. Prepare administrative reports as required.
25. Qualify as Peace Officer annually, as appropriate.
26. Perform any related duties as required.

Confidential Auditors (SG 18) (Salary range \$45,199 - 56,088)

Minimum Qualifications:

 A Bachelor's degree + two (2) years of accounting or finance or general business or other related experience; or an Associate's degree + four (4) years of accounting or finance or general business or other related experience.

Duties and Responsibilities:

The duties and responsibilities of the Confidential Auditor, as assigned by and through the Enforcement Counsel, are as follows:

1. Conduct comprehensive reviews of campaign finance filings by political committees and candidates based on criteria established by the Board through the Enforcement Counsel and the Deputy Enforcement Counsel, including reviewing for completeness and accuracy.

2. Audit the books and records of political committees and candidates as may be necessary to effectuate a complete and thorough assessment of compliance with Rules, Regulations, statutes, and Board Opinions and policies.

3. Conduct projects, including reviews for over contributions. Such projects shall include an analysis and application of appropriate Rules, Regulations, statutes, and Board Opinions and policies, and all correspondence and communications necessary to effectively complete these projects.

4. Assist the Enforcement Counsel, Deputy Enforcement Counsel, and Associate Counsel in the analysis and review of campaign finance disclosures and filings relative to complaint processing and the enforcement of failure to file with the Board.

5. Assist in the development and implementation of campaign finance and enforcement projects.

6. Assist in the calculation of contribution limits for all applicable offices based upon statutory formula.

7. Assist in the development of policy recommendations in the area of campaign finance.

8. Assist on all tasks and matters as may reasonably be assigned by and through the Enforcement Counsel.

Campaign Finance Training Assistants (SG 18) (Salary range \$45,199 - \$56,088)

Minimum Qualifications:

_____ A Bachelor's degree + two (2) years of related experience in training or other related experience; or an Associate's degree + four (4) years of related experience in training or other related experience.

Duties and Responsibilities:

The duties and responsibilities of the Campaign Finance Training Assistants, as assigned by and through the Enforcement Counsel, are as follows:

1. Assist in the development and implementation of a web-based tutorial for electronic filing with the Board.

2. Assist in the design and development of appropriate curriculum and instructional materials, including reference and training manuals, and programs related to campaign finance

registration, filing and disclosure requirements.

3. Assist in the review of all existing instructional and support materials for campaign finance issues.

4. Assist in the development and implementation of video and audio training sessions on campaign finance for dissemination and distribution to the county boards of elections, filers, and the public.

5. Assist in the coordination, scheduling, and conduct of campaign finance training seminars throughout New York State.

6. Assist filers requiring more intensive and time consuming assistance with electronic filing.

7. Assist on all tasks/matters as reasonably be assigned by/through Enforcement Counsel.

Confidential Enforcement Aide (SG 12) (Salary range \$34,033 - \$42,856)

Minimum Qualifications:

Four (4) years of progressively responsible office experience or general business or other related experience. College or business school studies/training may be substituted in whole/part.

Duties and Responsibilities:

The duties and responsibilities of the Confidential Enforcement Aide, as assigned by and through the Enforcement Counsel, are as follows:

1. Assist with the preparation and processing of Special Proceedings brought to obtain compliance with the requirements of Article 14 of the Election Law (Campaign Finance), as well as any proceedings or activities preceding or subsequent thereto, including word processing and clerical tasks associated therewith.

2. Assist with the preparation and processing of Judgements obtained by the Enforcement Unit, and subsequent proceedings or activities related thereto, including word processing and clerical tasks associated therewith.

3. Assist with the intake and processing of complaints received by the Enforcement Unit, and associated proceedings and investigations related thereto, including word processing and clerical tasks associated therewith.

4. Assist with the coordination and scheduling of campaign finance training seminars and other related proceedings or activities, including word processing and clerical tasks associated therewith.
5. Assist with the intake and processing of campaign financial disclosures and any related items, including word processing and clerical tasks associated therewith.
6. Assist on all tasks and matters as may reasonably be assigned by and through the Enforcement Counsel.

DUTIES AND RESPONSIBILITIES OF SIX INITIAL HIRES

Associate Counsels (SG - M2) (Salary range \$69,950 - 88,418)

Minimum Qualifications:

Admission to the New York State Bar and minimum of two (2) years subsequent practice experience.

Duties and Responsibilities:

The duties and responsibilities of the Associate Counsel, as assigned by and through the Enforcement Counsel, are as follows:

1. Enforce filing of financial disclosure statements; prepare and file necessary papers in connection with enforcement and judgment executions; ensure that late filings are accurately tracked and that enforcement steps are promptly, efficiently, and correctly undertaken; prosecute actions to compel late filings, impose financial penalties, and enforce judgments; represent the Board before the Courts and in communication with attorneys, treasurers, and candidates; assist in the preparation of the Financial Disclosure Enforcement Calendar.
2. Review complaint cases as assigned by the Enforcement Counsel, including complaints made pursuant to the HAVA Administrative Complaint Procedure; consult with Enforcement Counsel or Deputy Enforcement Counsel to discuss planned action on the complaints; draft legal memoranda to the Commissioners recommending a course of action and setting forth the basis of the recommendation; if an investigation is opened by the Board, draft updates to the Board as appropriate; draft all necessary follow-up correspondence, as well as Determinations of the Board.
3. Participate in and oversee hearings pursuant to the HAVA Administrative Complaint Procedure as assigned by the Enforcement Counsel; research applicable law, provide the hearing officer with reasoned legal advice based on established precedent, and perform all the administrative tasks of a clerk at the hearing.
4. In each case assigned by the Enforcement Counsel, oversee the investigative unit, and coordinate with local boards of elections, district attorney's offices, and government agencies as necessary.
5. Assist, as assigned, in projects of the Campaign Finance Unit and track the progress and completion of these projects; provide appropriate legal advice to campaign finance staff; assist in the

review and modification of campaign finance forms, the Handbook of Instructions for Campaign Financial Disclosure, and the State Board website as to campaign finance, and ensure that they are up to date.

6. Respond to written, telephone, and in person inquiries from the general public, attorneys, and public officials concerning the interpretation and application of the Election Law, as well as the Rules, Regulations, Opinions, and policies of the State Board.

7. Law clerk to presiding Officer at petition hearings; research the applicable law, provide reasoned legal advice based on established precedent to the hearing officer, and perform all administrative tasks of a clerk at the hearing.

8. Represent the Board in judicial proceedings; draft pleadings, memoranda, and correspondence relative to same.

9. Assist in developing policy recommendations to the Board in the areas of enforcement and campaign finance.

10. Assist on all tasks and matters as may reasonably be assigned by and through the Enforcement Counsel.

Confidential Auditors (SG 18) (Salary range \$45,199 - 56,088)

Minimum Qualifications:

A Bachelor's degree + two (2) years of accounting or finance or general business or other related experience; or an Associate's degree + four (4) years of accounting or finance or general business or other related experience.

Duties and Responsibilities:

The duties and responsibilities of the Confidential Auditor, as assigned by and through the Enforcement Counsel, are as follows:

1. Conduct comprehensive reviews of campaign finance filings by political committees and candidates based on criteria established by the Board through the Enforcement Counsel and the Deputy Enforcement Counsel, including reviewing for completeness and accuracy.

2. Audit the books and records of political committees and candidates as may be necessary to

effectuate a complete and thorough assessment of compliance with Rules, Regulations, statutes, and Board Opinions and policies.

3. Conduct projects, including reviews for over contributions. Such projects shall include an analysis and application of appropriate Rules, Regulations, statutes, and Board Opinions and policies, and all correspondence and communications necessary to effectively complete these projects.

4. Assist the Enforcement Counsel, Deputy Enforcement Counsel, and Associate Counsel in the analysis and review of campaign finance disclosures and filings relative to complaint processing and the enforcement of failure to file with the Board.

5. Assist in the development and implementation of campaign finance and enforcement projects.

6. Assist in the calculation of contribution limits for all applicable offices based upon statutory formula.

7. Assist in the development of policy recommendations in the area of campaign finance.

8. Assist on all tasks and matters as may reasonably be assigned by and through the Enforcement Counsel.

Campaign Finance Training Specialists (SG 23) (Salary range \$58,434 - 73,008)

Minimum Qualifications:

A Bachelor's degree and four (4) years of related experience in training or other related experience.

Duties and Responsibilities:

The duties and responsibilities of the Campaign Finance Training Specialist, as assigned by and through the Enforcement Counsel, are as follows:

1. Develop and implement a web based tutorial for electronic filing with the Board.

2. Design and develop appropriate curriculum and instructional materials, including reference and training manuals, and programs related to campaign finance registration, filing and disclosure requirements.

APPENDIX C

NYSBOE BUDGET SIDE LETTERS



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

40 NORTH PEARL ST, 5TH FL
ALBANY, N.Y. 12207-2108
Phone: 518/474-6220
www.elections.state.ny.us

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

Robert A. Brehm
Co-Executive Director

October 29, 2012

Mr. Robert L. Megna, Director
NYS Division of the Budget
Capital Building
Albany, NY 12224

Dear Mr. Megna:

The recent FY 2013-2014 Budget Request for the State Board of Elections was limited to the current year budget. We respectfully submit this budget side letter in which we amplify the request for a funding level necessary for the State Board of Elections to meet its core mission objectives.

The New York State Board of Elections, created in 1974, is vested with the authority and responsibility for the execution and enforcement of all laws relating to the elective franchise, the full and complete disclosure of campaign financing and practices, and the promotion and maintenance of citizen confidence in and full participation in the political process of our state (Chap. 604 of the Laws of 1974). The additional responsibilities that have been placed upon the Board in recent years have stressed the resources of the agency to meet its statutory requirements.

Elections Operations:

Of the State Board's multiple missions, on-site county board monitoring is essential. However this program has been drastically reduced because limited staff and resources have been directed towards aspects of board operations that have been necessarily reprioritized. An audit by the Office of the State Comptroller (2008-MS-7) took issue with the State Board reviews, or lack thereof. The board review agenda in place at that time has been modified by the Election Operations Unit to now include the physical audit of assets purchased with federal dollars, and the review and ongoing monitoring (where necessary) of new voting systems, such that the State Board will always be apprised of voting system functionality and any anomalies arising from same. Being on the front line of this newer aspect of the board review program is key to managing the need for system upgrades and necessary modifications, and the Unit's need to resume the conduct of operational reviews of county boards of elections as well as any interventions that may be necessary. The addition of an initial two staff members will help the Unit address

the need for the resumption of on-site overviews and for the implementation of any recommendations arising from a return to our board review agenda. (The initial addition of two PEF SG 20s have a starting salary of \$ 56,813 each) To ameliorate the comments in the audit and the concerns of the Unit, it is hoped that staff and resources can be restored, such that detailed board reviews may be resumed without a negative impact to the other critical tasks of the unit, and the routine election operations responsibilities. In the interim, as staff resources permit, training manuals, forms, sample procedures and other 'tools of the trade' are being reviewed and revised to reflect changes in overall election operations as well as in Election Law, and as each tool is completed, it will be reproduced and distributed to all boards and posted to the agency's County Board Info Portal for easy retrieval and reference by county staff.

Campaign Finance:

In 2005 the State Legislature mandated the extensive expansion of the electronic campaign finance disclosure program to require candidates and committees for local elections that raise or expend more than \$1,000, to file their campaign finance statements, in electronic format, with the State Board (Chapter 406 of the Laws of 2005). This has amounted to an increase in the number of filers of nearly 650%, without any type of commensurate increase in resources, and in fact, with a reduction in resources. The net effect being that staff has a greater number of open committees to service.

In 2005 there were approximately 1,500 registered and active filers. As a result of the Chapter, as of December 31, 2011, there were 12,319. This number is expected to continue steadily increasing, impacting on the level of staff work resulting from the continuing increased volume. In 2011, financial disclosure filings totaled 29,559.

In 2011, staff responded to 13,824 calls to the call center for assistance with registration and filing, registered 3,149 new committees, and terminated 2,434. Campaign finance staff processed thousands of pieces of mail. Enforcement staff handled thousands more items, and processed complaints from the public of violations of the Election Law. In 2011, approximately 56 complaints were brought to the Board for determinative action. A significant amount of time is required to adequately prepare a complaint for the Board's review.

Over the past several years, continuing unfunded staff positions have resulted in a serious reduction in the ability to fully address our mandated functions. There are 18 filled positions in Enforcement and Campaign Finance. There are also 18 unfilled positions. This has resulted in less time able to be given to assisting filers, resulting naturally in increased enforcement issues. Staff has little time to address needed administrative matters relative to registered committees and treasurers, or auditing matters which would result in better and more accurate reporting for the public's information. The law provides an education mandate, yet there is little money to enable us to reach the county levels for educational seminars. As well, how complaints are handled is impacted. The two Counsel are

pressed thin in overseeing all of the enforcement and campaign finance matters, and the amount of time that can be devoted to complaint issues has had to be reduced. Opening an investigation is a limited circumstance. We do not even have an Investigator on staff for even the basic review of preliminary matters.

As well, Chapter 399 of 2011 created new enforcement mandates. Any person who fails to file financial disclosure reports 3 times in an applicable election cycle may be sued and fined up to \$10,000. Also, the law created a new basis to sue for acceptance of over contributions for a fine of up to \$10,000. It is uncertain whether the Court will require every named defendant be sued in a separate proceeding as opposed to naming similarly situated defendants in one suit. In either case this increased legal work is imposed with no staff, most significantly legal staff, to do it.

In line with these numbers, we have also experienced a significant increase in the associated costs of running the Campaign Finance and Enforcement programs, including, but not limited to, education and training of filers, mailings (paper, envelopes, printing and postage), together with increased process serving fees necessary for enforcement.

The administration and implementation of campaign finance by the State Board is an interesting comparison with other relevant jurisdictions. In 2011, the Board's 18 campaign finance/enforcement FTE staff serviced nearly 12,000 registered candidates and committees for their compliance with the Election Law. The budget to support this was just over \$1 million. The Federal Election Commission employed 375 FTE to administer 10,000 registered committees and the public financing for presidential campaigns and party conventions, on a budget of \$66.6m. The NYC Campaign Finance Board employed 84 FTE, with a budget of \$40m (approximately \$27 million of public financing money and \$17 million for administration) to administer 367 registered committees for campaign finance compliance, and to administer their public financing program. Each FTE was responsible for the servicing of registered candidates/committees as follows: NYCCFB 4; FEC 126; State Board 666.

Any additional mandate imposed in the current budget cycle would obviously be extremely problematic to implement with the significantly reduced staffing, compounded by the systematic increase of all other Enforcement and Campaign Finance functions. The increasing number of active filers further impacts the State Board's requirement to support an increased level of compliance with statutory requirements of Campaign Finance provisions. In areas such as education of mandated filers, timely review of questions and problems, provision of support to filers, and greater general enforcement of the mandates, the State Board would continue to respectfully request an adequate appropriation for the coming fiscal year to fund and fill 18 FTE unfilled positions necessary for the Board to meet its mandate of public disclosure of financial filings that accurately depict the raising and spending of money by and for candidates for public office.

Information Technology Unit:

Candidate/Campaign and Financial Disclosure System (CAPAS/FIDAS)

The existing candidate/campaign financial disclosure database system was designed in 1994 to accommodate electronic filing by a relatively known number of state filers, approximately 1,500. The system does not meet campaign finance and enforcement requirements to support the additional number of candidates for local offices. The current system has many critical shortcomings including:

- It does not allow for filings to be submitted for overlapping elections;
- It only allows for a single linear filing;
- There is an inability to link historical administrative information and activities, such as treasurer and amendment histories.

This lack of functionality negatively impacts the capability of performing meaningful audits of filing records.

A separate software application used by filers to submit the financial disclosure data was also written in the 1990's and there is no means available to maintain this application. The State Board began a standalone project several years ago to replace this application. This software (EFS) has been tested and is undergoing its final review before release. Although this updated version does overcome certain incompatibilities with particular operating systems, there remain deficiencies in the user interface, database architecture, and the underlying technical architecture which must be resolved.

Additionally, the financial reporting system needs to allow for a usable capture and migration of data relative to local candidates and offices from the county boards of elections to the State Board. This capability will allow the State Board to know who is running for all of the local offices and who needs to file financial disclosure reports. The lack of this capability directly impacts the ability of the State Board to appropriately enforce filing requirements of local candidates and related political committees.

It is for all these reasons that the Board will be initiating a project in December, 2012 to address the State's needs for campaign and financial disclosure management. This system will be built using the OITS General Government Cluster Standards as they are developed. The keys to the success of this project will be the adherence to the enterprise architecture standards, identify and access management best practices, project management controls, and OITS shared services.

As a small agency, the State Board has a limited ability to take on such a large project but it can no longer wait for a large funding stream to solve this critical need. The vast increase in the number of filers of financial activity reports has led to an unacceptable stress on the system. Because of the deficiencies in the database and EFS, the Campaign Finance Unit is unable to adequately, or in some cases at all,

amalgamate information needed to effectuate reviews. In many instances it's because the system doesn't accommodate the filer, leading to difficulties in the review. In other instances, the system doesn't allow for the generation of information in the required format. At all levels, the State Board will be best served by an appropriate and complete review of the agencies needs, in conjunction with the existing system as well as with the up-to- date system needed to be built.

As stated, the project will begin in December, 2012 with the development of the "Business Case" and initial analysis using current State Board resources. In order to successfully implement the project, additional resources are being requested in the form of 2 FTE's to be used as part of the development team for 2013/2014. Additional PS and NPS funds will be required in 2014/2015. The two FTEs for 2013/2014 will require an additional \$154,665 (\$128,888 in Personal Service and \$25,777 in Non Personal Service.)

Backup and Recovery System

During June 2012, the Board's tape library system used to backup and recover data from the networked file servers failed. The system was out of warranty and a no longer manufactured or available for purchase. As a stop-gap measure, the Board has utilized the tape library system implemented and sized for the New York Statewide Voter database (NYSVoter). In order to complete this implementation, tape library hardware from the Board's Disaster Recovery site in Westchester was re-deployed to the Albany data center. It is critical that a complete analysis, design, and implementation of a proper backup strategy for all of the Board's data be completed. An additional \$100,000 of funding will be required to implement this system to cover costs of software and storage area networks for the Albany data center and the Westchester Disaster Recovery site.

Network Equipment

The Board's network firewalls are over 10 years old and near end-of-life for support. The firewalls are used to protect the Board's internal systems from potential attacks via the internet. In order to maintain the Board's high security requirements, the network equipment must be replaced. An additional \$75,000 is required to complete this project.

Servers and Storage

Several of the Board's servers are no longer covered under warranty agreements. This includes the development servers for the Campaign and Financial Disclosure systems as well as the Board's DNS servers. Additionally, the new Campaign and Financial Disclosure systems will require both application and database production servers and storage. In order to ensure proper support for the board's servers and storage of data, an additional \$100,000 is required.

SUPPORTING DOCUMENTATION FOR FY 2013-2014 BUDGET

Summary of Additional Funding Request by Unit and Service Type

ENFORCEMENT and CAMPAIGN FINANCE UNIT

Personal Services:	\$1,160,000
Non personal Services:	\$232,000

ELECTION OPERATIONS UNIT

Personal Services	\$113,626
-------------------	-----------

INFORMATION TECHNOLOGY UNIT

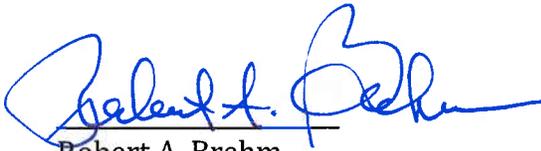
Personal Services	\$128,888
Non Personal Services	\$300,777

TOTAL Additional Funding Request for all UNITS: \$1,935,214

We would appreciate your consideration of our request for the additional funds necessary for full and complete administration of critical agency responsibilities.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Robert A. Brehm
Co-Executive Director



Todd D. Valentine
Co-Executive Director

RAB/TDV/dsm



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-6220
www.elections.state.ny.us

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

Robert A. Brehm
Co-Executive Director

February 7, 2012

Mr. Robert L. Megna, Director
NYS Division of the Budget
Capital Building
Albany, NY 12224

Dear Mr. Megna:

The recent FY 2012 Budget Request for the State Board of Elections was limited to the current year budget. We respectfully submit this budget side letter in which we amplify the request for a funding level necessary for the State Board of Elections to meet its core mission objectives.

The New York State Board of Elections, created in 1974, is vested with the authority and responsibility for the execution and enforcement of all laws relating to the elective franchise, the full and complete disclosure of campaign financing and practices, and the promotion and maintenance of citizen confidence in and full participation in the political process of our state (Chap. 604 of the Laws of 1974). The additional responsibilities that have been placed upon the Board have stressed the resources of the agency to meet the needs of the agency to complete Campaign Financial Disclosure Enforcement.

SUPPORTING DOCUMENTATION FOR FY 2012 BUDGET

ENFORCEMENT and CAMPAIGN FINANCE UNIT

PERSONAL SERVICES:

FTE (unfunded and unfilled 18) \$1,125,000 increase

NON PERSONAL SERVICES:

Indirect Costs to fill 18 FTE \$225,000 increase

Technology \$350,000 increase

In 2005 the State Legislature mandated the extensive expansion of the electronic campaign finance disclosure program to require candidates and committees for local elections that raise or expend more than \$1,000, to file their campaign finance statements, in electronic format, with the State Board (Chapter 406 of the Laws of 2005). This has amounted to an increase in the number of filers of nearly 650%, without any type of commensurate increase in resources. The net effect being that staff has a greater number of open committees to service.

In 2005 there were approximately 1,500 registered and active filers. As a result of the Chapter, as of December 31, 2011, there were 12,319. This number is expected to continue steadily increasing, impacting on the level of staff work resulting from the continuing increased volume. In 2011, financial disclosure filings totaled 29,535.

In 2011, staff responded to 13,284 calls to the call center for assistance with filings, registered 3,149 new committees, and terminated 2,434. Campaign Finance staff processed thousands of pieces of mail. Enforcement staff handled thousands more items, and processed complaints from the public about violations of the Election Law. In 2011, approximately 56 complaints were brought to the Board for determinative action. A significant amount of staff time supports the preparation of each complaint for Board consideration.

In line with these numbers, we have also experienced a significant increase in the associated costs of running the Campaign Finance and Enforcement programs, including, but not limited to, education and training of filers, mailings (paper, envelopes, printing and postage), together with increased process serving fees necessary for enforcement.

The administration and implementation of campaign finance by the State Board is an interesting comparison with other relevant jurisdictions. In 2011, the Board's 18 campaign finance/enforcement FTE staff serviced nearly 12,000 registered candidates and committees for their compliance with the Election Law. The budget to support this was just over \$1 million. The Federal Election Commission employed 375 FTE to administer 10,000 registered committees and the public financing for presidential campaigns and party conventions, on a budget of \$66.6m. The NYC Campaign Finance Board employed 84 FTE, with a budget of \$40m (approximately \$27 million of public financing money and \$17 million for administration) to administer 367 registered committees for campaign finance compliance, and to administer their public financing program. Each FTE was responsible for the servicing registered candidates/committees as follows: NYCCFB 4; FEC 126; State Board 666.

Additionally, Chapter 399 of the Laws of 2011 imposed an additional enforcement mandate relative to any person who fails to file three financial disclosure reports in the election cycle for the relevant office. This would entail additional lawsuits for the imposition of the fine of up to \$10,000. As well, any additional mandate imposed in the current budget cycle would obviously be extremely problematic to implement with the significantly reduced staffing, compounded by the systematic increase of all other Enforcement and Campaign Finance functions.

This increasing number of active filers further impacts the State Board's requirement to support an increased level of compliance with statutory requirements of Campaign Finance provisions. In areas such as education of mandated filers, timely review of questions and problems, provision of support to filers, and greater general enforcement of the mandates, the State Board would continue to respectfully request an adequate appropriation for the coming fiscal year to fund and fill 18 FTE unfilled positions necessary for the Board to meet its mandate of public disclosure of financial filings that accurately depict the raising and spending of money by and for candidates for public office.

TECHNOLOGY - The existing campaign financial disclosure database system was designed in 1994 to accommodate electronic filing by the relatively known number of state filers, approximately 1,500. An analysis of the system by the Board's Chief Information Officer concludes that the system does not meet campaign finance and enforcement requirements to support the additional number of candidates for local offices. The current system's database applications do not allow for filings to be submitted for overlapping elections, it only allows for a single linear filing. Additionally, there is an inability to link historical administrative information and activities, such as treasurer and amendment histories, which negatively impacts the capability of performing meaningful audits of filing records. The State Board has since updated the Electronic Filing Software (EFS) which has been tested and is undergoing its final review before release. Although this updated version does overcome certain incompatibilities with particular operating systems, there remain deficiencies in both the user interface and database architecture which will still have to be addressed.

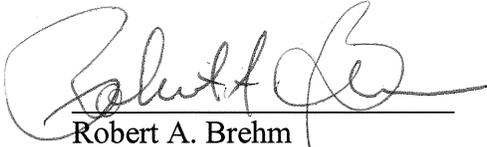
The financial reporting system also needs to allow for a usable capture and migration of data relative to local candidates and offices from the county boards of elections to the State Board so we know who is running for all of the local offices and who has to file financial disclosure reports. The lack of this capability directly impacts the ability of the Board to appropriately enforce filing requirements of local candidates and related political committees. This system needs to be built using a platform that accommodates up-to-date operating systems. Additionally, development of a modern web-based filing system, as opposed to a software attachment to an email, is needed for maximum efficiency and accuracy in reporting.

The vast increase in the number of filers of financial activity reports has led to stress on the level of review by the State Board. Because of the deficiencies in the database and EFS, the Campaign Finance Unit is unable to adequately, or in some cases at all, amalgamate information needed to effectuate reviews. In many instances it's because the system doesn't accommodate the filer, leading to difficulties in the review. In other instances, the system doesn't allow for the generation of information in the required format. At all levels, the State Board will be best served by an appropriate and complete review of the agencies needs, in conjunction with the existing system as well as with the up-to-date system needed to be built. An assessment to evaluate enforcement/campaign finance needs and to develop business rules to incorporate those needs with the development of a new database and reporting system is imperative. An estimated \$350,000 appropriation is necessary for this effort.

We would appreciate your consideration of our request for the additional funds necessary for full and complete disclosure of campaign financing, investigations of complaints.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Robert A. Brehm
Co-Executive Director



Todd D. Valentine
Co-Executive Director

RAB/TDV/dsm



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-6220
www.elections.state.ny.us

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

Robert A. Brehm
Co-Executive Director

November 18, 2009

Mr. Robert L. Megna, Director
NYS Division of the Budget
Capital Building
Albany, NY 12224

Dear Mr. Megna:

The recently submitted FY 2010 Budget Request for the State Board of Elections was limited to the current year budget, with an additional request for an appropriation for 2010 federal Help America Vote Act Requirement Payments that we anticipate being awarded. We respectfully submit this budget side letter in which we amplify the request for a funding level necessary for the State Board of Elections to meet its core mission objectives.

The New York State Board of Elections, created in 1974, is vested with the authority and responsibility for the execution and enforcement of all laws relating to the elective franchise, the full and complete disclosure of campaign financing and practices, and the promotion and maintenance of citizen confidence in and full participation in the political process of our state (Chap. 604 of the Laws of 1974). The additional burdens that have been placed upon the Board by the State Legislature, the Congress and the Courts, have stressed the resources of the agency beyond the breaking point in three key areas: Campaign Financial Disclosure Enforcement; Oversight of the local boards of elections; and meeting the needs of an expanding section of military and overseas voters.

SUPPORTING DOCUMENTATION FOR FY 2010 BUDGET

ENFORCEMENT and CAMPAIGN FINANCE UNIT

PERSONAL SERVICES:

FTE (unfunded and unfilled 17) \$1,010,000 increase

NON PERSONAL SERVICES:

Indirect Costs to fill 17 FTE \$200,000 increase
Technology \$300,000 increase

In 2005 the State Legislature mandated the extensive expansion of the electronic campaign finance disclosure program to require candidates and committees for local elections that raise or expend more than \$1,000, to file their campaign finance statements, in electronic format, with the State Board (Chapter 406 of the Laws of 2005). This has amounted to an increase in the number of filers of nearly 650%, without any type of commensurate increase in resources. The net effect being that staff has a greater number of open committees to service.

In 2005 there were approximately 1,500 registered and active filers. As a result of the Chapter, as of October 26, 2009, there are 11,567. This number is expected to continue steadily increasing, impacting on the level of staff work resulting from the continuing increased volume. In 2008, filings totaled 23,622. So far in 2009, almost 24,244 individual campaign financial report filings were made. And there is still one post election filing remaining in 2009.

In September 2009, staff responded to 1,644 calls to the call center for assistance with filings as compared to 932 calls received during September 2008. In all of 2008, Campaign Finance unit staff handled 7,400 pieces of mail. Through September, 2009, the Campaign Finance unit staff processed approximately 12,000 pieces of mail, and the Enforcement staff handled thousands more and the number of complaints we receive from the public about violations of the Election Law also continue to increase. So far this year, approximately 375 complaints were brought to the Board for determinative action. A significant amount of staff time supports the preparation of each complaint for Board consideration. These numbers increase each year.

In line with these numbers, we have also experienced a significant increase in the associated costs of running the program, including, but not limited to, mailings (paper, envelopes, printing and postage), together with increased process serving fees for enforcement.

This increasing number of active filers further impacts the State Board's requirement to support an increased level of compliance with statutory requirements of Campaign Finance provisions. In areas such as education of mandated filers, timely review of questions and problems, provision of support to filers, and greater general enforcement of the mandates, the State Board would continue to argue strongly for an adequate appropriation for the coming fiscal year to fund and fill 17 FTE positions necessary for the Board to meet its mandate of public disclosure of financial filings that accurately depict the raising and spending of money by and for candidates for public office.

TECHNOLOGY - The existing campaign financial disclosure database system was designed in 1994 to accommodate electronic filing by the relatively known number of state filers, approximately 1,500. An analysis of the system by the Board's Chief Information Officer concludes that the system does not meet campaign finance and enforcement requirements to support the additional number of candidates for local offices. Shortcomings in the system include database applications where the system doesn't accommodate beyond the basic linear single filing, the systems is unable to link histories of administrative activities, and doesn't accommodate multiple like filings

relative to an election. The system also falls short relative to the Electronic Filing Software (EFS) the agency developed to use for filing of financial reports. There are multiple areas of inability to allow for effective filing, as well as incompatibility with up to date operating systems.

The financial reporting needs to allow for the capture and migration of data relative to local candidates and offices from the county boards of elections to the State Board so we know who is running for all of the local offices and who has to file financial disclosure reports. This system needs to be built using a platform that accommodates up to date operating systems. Additionally, development of a modern web-based filing system, as opposed to a software attachment to an email, is needed for maximum efficiency and accuracy in reporting.

The vast increase in the number of filers of financial activity reports has led to stress on the level of review by the State Board. Because of the deficiencies in the database and EFS, the Campaign Finance Unit is unable to adequately, or in some cases at all, amalgamate information needed to effectuate reviews. In many instances it's because the system doesn't accommodate the filer, leading to difficulties in the review. In other instances, the system doesn't allow for the generation of information in the required format. At all levels, the State Board will be best served by an appropriate and complete review of the agencies needs, in conjunction with the existing system as well as with the up-to-date system needed to be built. An assessment to evaluate enforcement/campaign finance needs and to develop business rules to incorporate those needs with the development of a new database and reporting system is imperative. An estimated \$300,000 appropriation is necessary for this effort.

ELECTION OPERATIONS UNIT:
PERSONAL SERVICES:

Temporary/Seasonal (unfunded and unfilled 10)	\$30,000 increase
---	-------------------

NON PERSONAL SERVICES:

Board Review	\$30,000 increase
--------------	-------------------

A key mission of the Election Operations Unit is the oversight of the operations of each board of elections in the state. The State Board is charged with reviewing board operations on a periodic basis, to ensure compliance with statutes and regulations, and the consistent delivery of fair and accurate elections across the state. There are 62 county boards of elections, including the 5 boroughs making up the City of New York, as well as general offices of the City Board of Elections, in which certain tasks relating to all 5 boroughs are consolidated.

While so much immediate need and attention surrounds the incorporation of new voting technology and processes, ongoing and meaningful board reviews are necessary to ensure that basic and necessary election administration procedures are not sidelined or diminished. This outcome will negatively impact the ability to deliver sound, consistent, and reliable elections across the State.

The State Board's oversight includes the review of procedures and processes for conducting elections, the organization of the county board itself, staffing, document storage and retention, training efforts, problem resolution, and issues of special interest or concern to either the State Board or the county board. Board reviews will now include a review of the implementation of new voting systems and ballot marking devices, corresponding training and education initiatives. These reviews will also include asset management confirmation, including the physical inspection of each county's voting system service center, and processes and records related to the conduct of required periodic maintenance, election configurations, and pre and post election tasks and testing. The 2009 New York State Single Audit, that for the first time included an audit of HAVA program funding, found that the State Board has not conducted on-site monitoring of the county boards as the sub-recipients of the HAVA funds.

The State Board is fully committed to compliance with all aspects of HAVA, though this charge is a complicated and arduous one. At present, the State Board is under a federal court order which requires that the Board fully complies with HAVA, and does so by meeting specific compliance milestones, pursuant to the adoption of a strict timetable which is overseen by the US Department of Justice.

With an ever-increasing national focus on the election process, particularly in the areas noted above, the Board is working increasingly closer with our County Boards, and Federal, State and local agencies. We are developing requirements and procedures which address the new and changing needs of the electorate and the overall election process, and are creating corresponding methods of responsible and consistent implementation. The scope of this agenda is tremendous, and includes the certification, acquisition, acceptance testing, deployment, and use of poll site optical scan voting systems throughout New York, replacing all mechanical lever voting systems, in addition to the support and monitoring of over 30,000 pieces of voting equipment.

In 2010 New York State will experience a very busy election cycle with contests for every statewide office including Governor, Lieutenant Governor, Attorney General, Comptroller, all of the members of both houses of the State Legislature, State Supreme Court Justices in thirteen judicial districts, all Representatives in Congress, and both US Senate positions.

The Election Operations Unit has multiple missions for which it is responsible and while fully acknowledging that board visits are critically essential, they have been set aside while limited staff and resources have been directed towards voting system certification and acceptance testing. It is expected that voting system certification tasks will diminish in 2010, but acceptance testing of new systems will be running at full throttle. At the same time as acceptance testing is ballot access, with a full state and federal cycle of elections, temporary staff will need to be hired to ensure that there will be sufficient staffing levels for acceptance testing, board reviews, support and training programs, and to ensure the accurate and efficient performance of all ballot access tasks. We anticipate that 10 temporary staff person will be necessary to ensure this mission.

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT (UOCAVA)

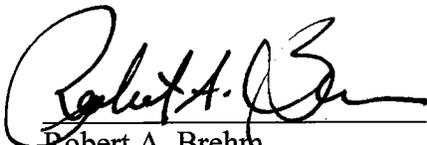
On October 28, 2009 President Obama signed the National Defense Authorization Act (P.L. 111-84) which included new federal provisions for military and overseas voters (Subsection H - Military and Overseas Voter Empowerment Act, (MOVE Act of 2009). These provisions impose new obligations on New York State to provide for electronic access to voter registration and ballot materials as well as new standards for the collection and reporting of certain data related to uniformed and overseas voter participation. Under the legislation ballots to uniformed and overseas voters must be mailed 45 days before the federal election unless annually a waiver request is approved for each federal election.

The State Board is currently working to establish cost estimates for the new electronic access and data collection/reporting provisions of the MOVE Act. Section 588 of the Law authorizes and appropriates under HAVA "such sums as necessary" for FY 2010 and beyond as requirements payments to the States specifically for implementing the MOVE Act. Any funds appropriated under this provision may only be used to carry out the requirements of the MOVE Act. If a State receives a FY 2010 requirements payment specifically authorized for implementation of the MOVE Act, it has until the last day of the 2011 fiscal year (September 30, 2012) to comply with the 5% match requirement.

We would appreciate your consideration of our request for the additional funds necessary to maintain full compliance with the Help America Vote Act, the full and complete disclosure of campaign financing, investigations of complaints, and to prepare for the new obligations to provide for electronic access to registration and ballot materials by uniformed voters and overseas voters.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Robert A. Brehm
Co-Executive Director



Todd D. Valentine
Co-Executive Director

RAB/TDV/dsm

APPENDIX D

STAFFING/BUDGET PROJECTIONS OF NYSBOE BASED ON NYC CAMPAIGN FINANCE BOARD MODEL

Projected NYSBOE Staffing & Budget Needs Based on NYCFCB Model

A. Analysis based on the ratio of offices in NYC to staff and a concomitant requirement at the state level

NYCFCB			
Critical Units	Staff	Offices	Offices/Staff Ratio
Auditing & Accounting	20	59	2.95 to 1
Candidate Liaisons	8	59	7.38 to 1
Legal	11	59	5.36 to 1
Special Compliance	3	59	19.66 to 1
Systems	15	59	5.90 to 1
Total Staff	57		

NYSBOE			
Offices*	Equivalent Staff	Average Salary	Budget Requirement
217	74	\$ 52,000.00	\$ 3,848,000.00
217	29	\$ 44,000.00	\$ 1,188,000.00
217	40	\$ 84,000.00	\$ 3,360,000.00
217	11	\$ 71,000.00	\$ 781,000.00
217	36	\$ 60,000.00	\$ 2,160,000.00
Total Staff	190		\$ 11,337,000.00

*Does not account for mid-cycle election at the state level which may require additional staff to complete all auditing and enforcement tasks in 2-year time frame.

B. Analysis based on the ratio of campaigns in NYC to staff and concomitant requirement at the state level

NYCFCB			
Critical Units	NYCCFB	Campaigns*	Campaigns/Staff Ratio
Auditing & Accounting	20	232	11.6 to 1
Candidate Liaisons	8	232	29 to 1
Legal	11	232	21.09 to 1
Special Compliance	3	232	77.33 to 1
Systems	15	232	15.46 to 1
Total Staff	57		

NYSBOE			
Campaigns**	Equivalent Staff	Average Salary	Budget Requirement
1500	129	\$ 52,000.00	\$ 6,708,000.00
1500	51	\$ 44,000.00	\$ 2,244,000.00
1500	71	\$ 84,000.00	\$ 5,964,000.00
1500	19	\$ 71,000.00	\$ 1,349,000.00
1500	65	\$ 60,000.00	\$ 3,900,000.00
Total Staff	335		Total Budget \$ 20,165,000.00

* Based on the 2009 NYCCFB Administrative Report

** Based on the approximately 1500 state-level committees which file with SBOE

** This does not account for mid-cycle election at the state level which may require additional staff to complete all auditing and enforcement tasks in 2-year time frame.