

# **2024-2025 LWVNYS Study**

## **Voting Systems Approval Process**

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# INSTRUCTIONS

## **Committee Charge and State League Study Process**

This Committee was charged by League delegates at the 2023 convention with studying the State Board of Elections (BOE) Voting System approval process system with the purpose of seeing if the process can be improved to be more effective in ensuring that approved voting systems meet a balance of the SARAT (secure, accurate, recountable, accessible and transparent) criteria.

Using the new study process adopted by the Board in 2019, the Voting Systems Approval Committee has prepared a set of position statements that, if approved by members, will be used to form new state League positions on how the voting systems approval process in New York could be improved. We are using the term “voting systems” instead of “voting machines” because this is the term used by the United States Election Assistance Commission (“EAC”) which develop the standards for certifying voting systems. Over 40 states, including New York, require EAC certification. While “voting systems” is also sometimes used to refer to the set of rules used to determine the results of an election (electoral systems), for purposes of these materials it will be used to refer to devices used to mark ballots, tabulate ballots, or both.

The results of the study have been divided into two separate categories of board-approved position statements that we are asking local League and individual members to concur with. If approved by members, one or both categories of statements will be used by the state Board to finalize new state League positions on the voting system approval process. The wording of the final positions will not differ substantively from the wording of the statements, but this flexibility in wording will allow us to make editorial changes for clarity.

## **League and Member Response Process**

*We are asking you to make two separate decisions on two separate sets of position statements. You may concur with one, both, or none.*

- *Do you concur with Position Statements 1 on improving transparency and public input during the approval process?*
- *Do you concur with Position Statements 2 supporting the state BOE or county BOEs being able to solicit a new customized voting system from a vendor, or multiple vendors, and making supplemental state funds available for counties that chose to buy the new system once it is certified by the state?*

We are urging all local Leagues to have member meetings to discuss the materials and the statements. Individual member’s input will have greater weight as part of their local League response. For members who cannot attend their local League discussions, or members of a local League not participating in the study, the state League will organize virtual discussions and

Q&A sessions. Individuals may complete an individual response form only if they participate in one of these sessions. *The summary of current advocacy below is for informational purposes only and not part of the concurrence process.*

## **Summary of Current Voting Systems Approval Advocacy**

Under a system put into place in 2010 post-HAVA, most New Yorkers vote by hand-marked paper ballots which are scanned and tabulated by machines. Most Americans also vote using a similar system. <https://www.reuters.com/graphics/USA-ELECTION/VOTING/mypmnewdlvr/>

Each voting place is required to have fully accessible ballot marking devices (BMD) that can be used by individuals with disabilities. In New York usually these are older BMDs that mark paper ballots that are then tabulated by the same machines that scan and tabulate hand-marked ballots. In 2023, the New York state BOE approved the ES&S Express Vote XL a BMD, with optional components for individuals with disabilities, that offers ballot on demand, ballot marking, and a ballot scanner/tabulator with a verifiable paper record. Certification was opposed by some groups on the grounds that this class of voting system was not secure and voters who did not need an accessible BMD should continue to vote on hand-marked ballots. These same groups have also supported a bill in the state legislature that would ban this class of BMDs and require hand-marked ballots at every polling place.

<https://www.nysenate.gov/legislation/bills/2023/A5934/amendment/A>

The national and state Leagues have not taken positions for or against any class of voting system. Working with New York disability rights groups, we have on occasion made comments during the state BOE certification process focusing on usability and accessibility.

As a threshold issue, the Voting Systems Approval Process Committee unanimously agreed that we did not have the expertise to judge the security of any class of voting systems. All systems approved by the state BOE meet Federal Election Assistance Commission Voluntary Voting Systems Guidelines and state law and code requirements as verified by independent testing experts. The reports are posted on the state BOE website, e.g. <https://elections.ny.gov/voting-systems-testing>. See Appendix I for a fuller description of the process.

The proposed position statements below address what the Committee's research identified as perceived weaknesses in the current approval process, as well as suggesting League support for development of a new customized voting system for New York.

## **Proposed Position Statements**

1. The League of Women Voters of New York State believes that a more transparent and open voting systems approval process would improve voter understanding of, and confidence in, our elections.

- Support for greater transparency and public input in the approval process, including increased demonstrations open to the public, followed by comment periods.
- Public demonstrations should be scheduled to provide public input earlier in the certification process.

2. The League of Women Voters of New York State believes that supporting the development of a publicly designed and developed new customized voting system for New York State could improve accessibility and confidence in our elections.

- Support for a change in Election Law and Code to allow for development of a publicly designed new customized voting system for use for by all voters, including those with disabilities.
- State funding should be made available to help fund the design and development process, and to assist counties purchase the new voting system once it is certified by the state BOE.

## **Rationale for the Proposed Statements of Position**

### **Proposed Position Statements 1**

During discussions with New York disability rights advocates, a consistent theme was that greater and more timely public input was needed before systems were certified. This is also consistent with our work with these advocates over the years during the approval process. As noted in Appendix I, changes to the equipment requires retesting and recertification.

Another thing that became apparent during our research was that other state websites had better organized and more transparent explanations of the testing procedures for voting system approval. Testing reports are made publicly available on the state BOE website but could be made much easier to understand using separate flow charts or matrices.

### **Proposed Position Statements 2**

Voting advocates in New York have long been concerned about vendor supplied voting systems being limited and not tailored to voters in our state. This concern, and the recent example of the development of a publicly owned and voter-driven system in a different jurisdiction, lead the Committee to propose that New York state should explore how to move from “vendor-driven” systems to allowing the state BOE or a county BOE to develop its own system.

We are also proposing that the state consider making state funds available for counties that purchase the new system. This may be necessary because of the substantial upfront costs of

designing the system and having a vendor, or multiple vendors, build the system. The League has advocated consistently for making more state funds available for county BOEs.

An example of a publicly owned voting system is Los Angeles County- see Appendix II for more details. Rather than purchasing a voting system outright from a vendor, LA County, home to over 4 million registered voters, created their own voting system. This required getting a bill passed that allowed for public development and ownership of a voting system, using public funds for research and design. Several advisory committees contributed to the process, including the League of Women Voters, working in conjunction with a tech company for the software. The system uses a ballot marking device that is accessible to all voters including those with disabilities, and accommodates the multiple languages in LA County. The final system was tested according to State and Federal law, then given approval by the California Secretary of State, who oversees all elections.

## **Opposing Arguments**

### **Proposed Position Statements 1**

Given the League's broad support for public input and transparency in government, the Committee did not identify any arguments in opposition to Position 1.

### **Proposed Position Statements 2**

The process of designing and developing a new customized voting system would be expensive and lengthy, and the introduction of any new voting system can cause confusion and disruption at polling places. The process in LA County took 10 years and cost over \$300 million. Under the current system in New York the county BOEs not the state chose and buy equipment. Seeking vendors and purchasing a new customized system could require additional state funds, and run the risk of political interference in the process.

## **Appendix I – Process of Voting System Approval in New York**

The State BOE plays a passive role in the current process for selecting voting systems as the process is vendor driven. Vendors contact the State BOE to determine if they can sell their systems in New York State, providing the State BOE with information and a technical data package for their system. They also provide copies of ballot designs.

The State BOE must approve moving forward with the testing of equipment to ensure it meets federal standards, the Voluntary Voting System Guidelines (VVSG), which New York State adopted as its own. The State BOE is revising the regulations to update requirements to meet the VVSG 2.0 standards. Opting into the VVSG helps save time and money, as testing is expensive and time-consuming. If a federally certified laboratory tests a voting system and it meets VVSG requirements, then the State BOE can accept the federal testing without additional testing. There are only two federally certified laboratories in the country, and only one bid on the New York State contract. SLI Compliance, New York State's laboratory, has served as the state's testing laboratory since 2011.

SLI develops a testing matrix for the equipment after going through the technical package the vendors provide. They consult with New York State Technology Enterprise Corporation (NYSTEC), an independent nonprofit that serves as a technology consultant for state contracts for other state projects and agencies, to ensure they did not miss key components of the standards in the matrix. Once the two entities agree on a testing matrix, SLI develops test cases for each individual requirement in the federal standards. Testing includes a wide range of scenarios but includes human testing to ensure the system can recover from any errors on-site immediately.

Public testing is required under the current law. The State BOE tries to perform testing in multiple public demonstrations in different places to get feedback. All testing is livestreamed and recorded with captions and ASL for accessibility. The State BOE offers demonstrations for specific groups, such as Disability Rights New York, to obtain feedback on accessibility and ease-of-use from a wide array of individuals but only one public demonstration is mandated under current regulations.. In addition, the State BOE will review problems other states encountered to ensure the issue does not apply to version used in New York State or the New York State version has mitigants in place. Any discrepancies found in the laboratory or public testing will lead to discussions regarding the possibility of compensating controls or if the system will not meet standards and be rejected.

Following testing and public demonstrations, the State BOE commissioners post the results to the State BOE website and determine if they should approve the voting systems. This also allows for public comment. Once the State BOE commissioners approve the voting systems, they are considered State BOE-certified and county BOEs can purchase them. If the State BOE rejects the voting system, the vendor can update their system to bring in a new system and the testing process starts over. In addition, the State BOE developed additional procedures for when a

vendor proposes modifications. If there are any changes to the equipment, even something as minor as a change in wheels, the equipment must go through laboratory testing again for recertification. If the law changes, a vendor is required to make modifications on software, such as when the New York City BOE had to add a Bengali language option to their equipment. This is not run through the recertification process but through other State BOE procedures.

As counties run their own elections, county BOEs are the entities purchasing voting systems equipment. The county BOEs hold significant influence over the process as they are in constant contact with the vendors. County BOEs have two options to purchase any State BOE-certified equipment: on the state contract or direct procurement. If a county BOE purchases on the State BOE contract, they simply purchase the equipment without extra steps or approval. If they directly procure the equipment from a vendor, the State BOE must review and approve the contract. One ongoing concern is that county BOEs do not have sufficient funds or staffing to support their own selection and purchase voting systems equipment. The contrary view is that the county BOEs know what is best for their voters because they run the elections.

## Appendix II - Summary on Voting System in Los Angeles County CA

As noted above, the process of approving voting systems is “vendor driven” as currently any vendor can come to the State BOE and have their system considered, whether it truly meets state needs or not. We looked at other state approval processes and learned that Los Angeles County created their own system. The LA County system was supported throughout its conception, design, and implementation by the local League. Accordingly, we spent some time examining this process and system, which is called Voting Solutions for All People (VSAP).

In 2013 the LA County Registrar-Recorder/County Clerk’s office worked with a State Senator on the drafting, introduction, and eventual adoption of Senate Bill 360. The bill added language in the CA Elections Code to allow for public development and ownership of a voting system. The language in the code, prior to that bill, contemplated voting systems being purchased from vendors as the only way to acquire a voting system. The bill, among other things, allowed for use of public funds for the research and development of a new voting system, the piloting of voting systems, and required the elected Secretary of State (who oversees all elections) to adopt and publish voting system standards and regulations.

The full language of Senate Bill 360 is here:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB360](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB360)

In 2016 the California Voters Choice Act was passed, allowing participating counties to conduct elections under a model giving greater flexibility for voters to choose how, when, and where to cast a ballot. The four main points are:

- ballots are mailed to every registered voter (no postage required for return).
- expanded in-person early voting.
- voters can use any vote center (these centers replace polling places).
- secure drop off box locations.

Los Angeles County chose to participate as a Voters Choice County and continued the development of its new voting system to work within this Act. Once the VSAP was ready to be implemented, they submitted it for certification to the Secretary of State.

Development of VSAP took 10 years, with extensive community and technical input. The Registrar-Recorder/County Clerk of LA County was the putative head of the process, but he utilized several advisory committees. The entire process was completely voter driven. The Community Voter Outreach Committee still meets quarterly, with several delegates from area LWVs participating. This Committee coordinates with the elections office as a resource. The Committee also has members from multiple interested groups such as those representing the disabled, language groups, and other organizations like Fair Vote, etc.



Research and development were funded partially by unused HAVA funds, and by funding secured by the Board. (The Voting Modernization Board's role was mostly to distribute to counties the funding made available for voting system modernization in 2002. The Board is not very active currently). We were advised that most counties have exhausted all the funding made available. More information on the Voting Modernization Board is here:

<https://www.sos.ca.gov/elections/voting-modernization>

The research phase was done in conjunction with a technical company, and then they found another company to physically build the machine system. They eventually came up with a BMD (Ballot Marking Device) that produces a paper ballot, which is stored physically for 22 months. This is in addition to required electronic storage. The software accommodates 18 languages, both visually, and in the audio version for the visually impaired. It is completely accessible to physically and visually handicapped voters, and easily transported. Since LA County uses voting centers, and mobile voting centers, it was important to have it portable. Multiple security checks were also performed on this system, before launching it, and again after the initial trial to work out the "bugs".

The system was tested according to state law, which includes federal testing, and approved by the California Secretary of State, who oversees all elections in the state. VSAP has worked well, and LA County is considering offering it for sale to other jurisdictions. Since there were already so many aspects to consider in developing this new system, LA County did not try to address making it compatible with Ranked Choice Voting.

Website for voting in LA County, [www.lavote.gov/home/voting-elections](http://www.lavote.gov/home/voting-elections), includes considerable information on how voting is done in LA County, plus all voter registration information. LA County's approach to voting, in general, is different from the approach in many other parts of the state. In addition to having its own voting system, LA County is a Voters Choice County, with a specified number of Vote Centers based on population, throughout the County.

At another time it might be interesting to look at how voting is done there, but for now we limited our scope to the voting system itself and how it was developed. A wealth of information is available on this site relating to the system:

\*\*After getting on the site, go to the box that says Community Voter Outreach, and click on Voting Accessibility Advisory Committee. When that page opens, click on small box that says Voting Solutions for All People, then on the next page click on small tab at the top which says "Explore". Under that heading you can read about the design concepts, principles, and process of the entire system. Definitions are included on transparency, security, and other areas of SARAT. There is also a video that demonstrates a person using the final system.

In addition to the “Explore” tab, there are other tabs that take you to more information on the research, companies used in development, etc.

Another very helpful video shows how the VSAP was developed with community support

<https://www.youtube.com/watch?v=dsf8XHsgSbI&t=5s>

## **Appendix III – Additional Reference Materials**

### **National Standards for testing voting systems**

Congressional Research Service Federal Standards and Guidelines for Voting Systems:  
Overview and Potential Considerations for Congress

<https://crsreports.congress.gov/product/pdf/R/R47592/3>

**US Election Assistance Commission Voting System Testing and Certification Program;  
and National Conference of State Legislatures Overview of Voting System Standards,  
Testing and Certification**

<https://www.eac.gov/sites/default/files/2023-08/State%20Requirements%20for%20Certification%202023.pdf>

<https://www.ohiosos.gov/elections/elections-officials/county-voting-equipment/>

<https://www.ncsl.org/elections-and-campaigns/voting-system-standards-testing-and-certification>

### **New York State Voting Systems Testing**

<https://elections.ny.gov/voting-systems-testing>

<https://casetext.com/regulation/new-york-codes-rules-and-regulations/title-9-executive-department/subtitle-v-state-board-of-elections/part-6209-voting-systems-standards>

Reference materials for the LA County system are in Appendix II above.

