

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
20 Trinity Street • Hartford, Connecticut 06106 - 1628

**STATEMENT OF JEFFREY B. GARFIELD, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL OF THE STATE ELECTIONS
ENFORCEMENT COMMISSION**

**Public Hearing of the Joint Committee on Government
Administration and Elections**

February 27, 2007

Thank you for the opportunity to comment on the bills on today's agenda.

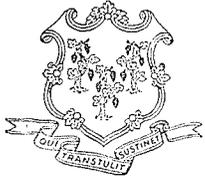
Raised Bill #1314, sections 2-6 are proposed by the State Elections Enforcement Commission to cure some voids in the Commission's authority, clarify other provisions, and make technical amendments to the Comprehensive Campaign Finance Reform legislation enacted in December 2005. Section 1 calls for a study by the GAE Committee of the campaign finance reform laws, which was not in our proposal. Section 2 notably specifies that the Commission can:

- Impose a penalty of \$10,000 against a respondent who violates a Commission order
- Issue orders to cease and desist, to take action or otherwise comply with the election laws, including the public financing provisions.
- Impose penalties for violations of any regulations issued under the election laws
- Conduct inspections, audits or investigations related to the Citizens' Election Program without limitation on the time period. (that is otherwise prescribed in the law). To make this even more clear, we request that you insert the words "at any time" in line 151 after "Program."

Sections 3 through 6 make a number of technical or clarifying revisions. Section 3 eliminates references to primaries for convention delegates which do not exist any more. Section 4 makes clarifying revisions to content of the PAC registration form to conform to the new law and the form prescribed by the SEEC. Sections 5 and 6 eliminates references to the Secretary of the State, and inserts the SEEC in lieu thereof, as the Commission was made the campaign finance report filing repository under the Comprehensive Campaign Finance Reform legislation. (Public Act 05-5, October 25 special session). I would like to thank the Co-Chairs for raising this bill.

In reviewing the entire Chapter, there are several other technical changes I feel need to be made, and I will submit these by next Monday.

As strongly as we support **Raised Bill #1314**, the **SEEC opposes HB 5989** which effectively undoes the accountability and transparency procedures in absentee balloting that we, the Town Clerks and Registrars of Voters, collaboratively worked on to enact in



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Public Act 05-235. . The Commission has a long history of enforcing the absentee ballot laws, and continues to investigate cases every year that allege manipulation of absentee ballot voters. Individuals who are unable to make it to the polls are entitled to the same amount of privacy in casting their ballots as an individual who closes the curtain at the polling place. It has been our experience that the abuse starts with the application process, and elderly or disabled populations generally do not understand that a candidate or committee worker can help them with the application, but not the ballot. So a relationship is formed, and the individual returns to "help." We sought to change this process with a neutral corps of absentee ballot workers, and conducted a well received Absentee Ballot Pilot Project. We attempted to pass its major components into law, and Public Act 05-235 was the product of what legislators could agree on. Since the person assisting the applicant was generally the one returning to "help" with the ballot, our experience with investigations identified a need to track the applications.

The new law has aided us in our investigations since that time. When questions have arisen concerning particular ballots, the logs have given our investigators a place to start. It helps answer innocent questions, not only questions with respect to those that are culpable. We conducted a comprehensive survey of town clerks after the 2005 election when these provisions were first implemented, and expected that many of them might tell us it was not useful: But that is not what the survey said. One hundred and twenty-three (123) clerks responded to the survey and the responses were interesting. The number of absentee ballots issued was generally the same as the 2003 election. The new process did not decrease absentee voters. One hundred and thirteen (113) Town Clerks responded that everyone who wanted an absentee ballot received one, only 3 were aware of people that may not have. The Town Clerks largely supported the new law and there were substantially favorable comments regarding its helpfulness in the accountability of the absentee ballot process. There were additional costs in terms of time to maintain the log, but many felt that they were offset by increased accountability. Town Clerks wanted to see applications pre-numbered by the state and uniform logs: Although to my knowledge the Secretary has not formally approved one, we worked with the Clerks and they have reviewed each others forms and taken the best from their colleagues. There was no outcry that it was unworkable, and we asked the Town Clerks to report complaints to us. In other cases, the log and distributor list helped when a clerk was unable to read the applicant's handwriting on the application itself, and assisted the clerk getting a ballot to the voter.

The summary of requirements and prohibitions of the absentee voting laws that we were required to prepare pursuant to the new law, which we entitled "All You Need to Know About Absentee Ballots," was well received. In fact, we went further than the law required, and provided a statement of warning and penalties on the back of the flyer, which if used, constitutes compliance with the written explanation of eligibility requirements and penalties required to be included with an unsolicited mailing of absentee ballot applications. We found that campaigns and committees were simply sending the flyer itself along with the mailings, because it included the required notice, so obviously campaigns found it helpful. Our Spanish speaking investigator has just returned from an 18 month military leave, and we already have it translated into Spanish.

We have worked with statewide campaigns this election cycle to help them accomplish their goals of communicating with voters. In short, we strongly oppose turning back the clock on recently enacted reforms that are having a positive effect.

We commend the Secretary of the State for bringing forth **SB # 1311**. The audit component of this proposal is critical to ensuring the public's confidence in the new voting systems being employed. The Secretary's proposal is very ambitious in this regard, but we do feel it is essential to our democratic process. I would point out that the effect of the bill will be to outlaw lever voting machines in municipal elections and referenda, as the Election Assistance Commission has opined that they do not comply with the voluntary performance and test standards under the Help America Vote Act. The use of lever machines would otherwise still be permissible in municipal elections. The advantage of switching over for all types of elections would be uniformity: If we retain lever machines we will effectively need two election systems, one for federal and state elections, and another for municipal elections.

Regarding the audit process, the Commission should also be included in that process, or at a minimum, receive a copy of the audit report in the early stage. Particularly in the event that audit officials are unable to reconcile the manual count with the machine tabulation, the Commission's expertise in investigations could be useful. The Commission should also be included in the lockout portion of the bill at line 95 in subsection (k): The bill only provides that the Secretary of State's office or a court of competent jurisdiction can extend the lockout period. The Commission can presently impound voting machines after an election, primary or referendum to preserve evidence and its authority should extend to the new voting system. The Commission has held local election officials accountable in the past for errors in the set up of voting systems, and the same authority should extend to the new systems being implemented. We hope the audits will not reveal any discrepancies, but if they do, we will all want to know why.

I would also like to commend the Registrars of Voters Association for all their hard work to bring forth 5 of the bills on your agenda today. I am especially pleased that ROVAC and the Town Clerks Association collaborated on **HB 7259**, and some of the changes made in the other bills. The Commission's experience working with both ROVAC and the Town Clerks Association on the absentee voting pilot program and the revised procedures was also a very positive experience, and I am pleased that these two organizations of election officials again worked together to find common ground and seek improvements to the election laws. We wholeheartedly support changes intended to protect and enhance the voting rights of the disabled in **HB 7258**. The Commission feels obligated to point out to the committee that **HB 7259** will remove the statutory protections for lever voting machines, which may foreclose their usage by municipalities that retain them for referenda or other municipal election purposes. If the GAE Committee agrees to outlaw the use of lever voting machines, as proposed by the Secretary of the State, then, of course, the statutory protections for lever machines are unnecessary. The bill's treatment of paper ballots concerns us. There may still be situations where there are so many candidates on a ballot that it cannot fit on an optical scan ballot. This bill would remove that option. In the event of a failure of the optical

equipment, the paper ballot provisions of existing law provide a back up procedure that we are not prepared to do away with. As drafted, the Paper Ballot procedures would apply only to referenda. If we eventually completely remove the lever machines from service in all Connecticut municipalities, we will then be ready for this part of the bill. Until then, it may leave us without procedures for situations that are easily foreseeable, and in fact, likely to occur.

I'd like to offer a few brief comments on some of the other bills.

SB # 40 provides a statutory definition of "bona fide resident" for voting purposes. I won't comment too much on this proposal as the SEEC has several cases pending that deal with this issue. However, it is useful to have a definition in the statute, as the Secretary of the State and the SEEC have been using a common law definition of the term.

SB 546 while I believe is well intentioned raises constitutional issues under the First Amendment. While I believe that a candidate who voluntarily participates in the Citizens' Election program can be limited in this regard, I also believe that the Courts would find unconstitutional a restriction on such timing for candidates who do not participate, and do not receive public funds.

SB 1313 as drafted does not clearly apply to political robo calls, despite its title. I will say that the SEEC received numerous calls during the most recent campaign from citizens who were very angry and annoyed at such calls.

If this Committee decides to proceed with **SB 40**, we would like the opportunity to have input in the drafting of the final bill.