

**Approved March 15, 2021**

**Minutes of the New York State Board of Elections  
January 28, 2021**

The meeting of the New York State Board of Elections held remotely by WebEx was called to order at approximately 12:00 pm. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Andrew Spano, and Anthony Casale. Staff members present were Robert Brehm, Todd Valentine, Brian Quail, Kim Galvin, Nicholas Cartagena, William McCann, Tom Connolly, Brendan Lovullo, John Conklin, Cheryl Couser, and Bill Cross.

This meeting is a continuation of the Board Meeting of January 14, 2021. It is to consider the certification of certain voting machine systems.

DISCUSSION: Election Operations staff prepared two resolutions for the Commissioners to consider; one resolution dealing with Dominion Voting Systems, and the other dealing with Election Systems and Software.

Regarding Resolution 21-03, Tom Connolly, Director of Election Operations, stated that the resolution relates to modifications requested by Dominion Voting Systems for the ImageCast Precinct scanner software and ImageCast Evolution (ICE) machines. There were small updates to the firmware for the ImageCast Precinct to improve ballot image processing. As for the ImageCast Evolution, the requested modification is an update to the firmware used by the printer component. The resolution references an additional step in the audit procedure for counties that use ICE machines, where there is an additional check on the counters. Additionally, the resolution restates the formula counties should use when determining the number of voters that may be assigned to a machine.

· VOTE on Resolution 21-03. Motion to approve certification of Dominion Voting Systems' modification. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

DISCUSSION: Regarding Resolution 21-04, Tom Connolly stated that this resolution is related to Election Systems and Software, LLC's (ES&S's) submission of a voting system which contains new hardware and software components in addition to modifications to hardware and software from the previously certified ES&S voting system. After review and public comments, staff is recommending certification for certain items, including the new version of the Electionware software, and the three hardware based updates, including: the DS200 precinct-based scanner, the DS850 central count scanner, and the DS450 central count scanner). Further, staff is recommending to not certify the Express Vote XL component due to the issues regarding ballot and electronic display of the voter's selections as well as the ability of the system to print in alternative languages for the voter. In addition, even though the DS200 which is a precinct-based scanner is hardware that's being approved because it passed the certification test, it should

not be currently used as a precinct-based scanner as there is no ballot marking device that is currently certified to work in tandem with DS200.

· VOTE on Resolution 21-04 Motion to approve certification of certain components of ES&S EVS Voting System. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

DISCUSSION: Rank-choice voting.

Commissioner Kosinski wanted to reiterate his thoughts from the December 3<sup>rd</sup> meeting, he is happy to see the principle that voting machines in use in New York State must be certified by the State Board, but that ranked-choice voting is in direct conflict with State Election law. He cited the McDonald case that stated that state law shall prevail when a local law is either in direct conflict or inconsistent with state law. He wants to be helpful to the New York City Board, but he has serious objections about the legality of ranked choice voting. Yes, there are Home Rule powers, but they are limited and emanate from the state. Commissioner Kosinski also said that the board will try to be helpful to New York City as part of what the State Board does is to help local boards. Commissioner Kellner indicated that he is pleased that the State Board is moving forward to process the procedure for handling runoffs that New York City proposed. Further, Commissioner Kellner stated that he respects Commissioner Kosinski and Casale's comments and concerns. However, Commissioner Kellner disagrees with their conclusion, stating that Article 11 of the State Constitution gives strong home rule powers to municipalities in this state, and no court has declared the Charter amendment adopted in New York City more than a year ago to be invalid and the board has an obligation to defer to the courts on this issue.

DISCUSSION: Statement in support of County Boards and their bipartisan operation.

John Conklin drafted a statement requested by the Commissioners at a previous meeting that was read and put on record in support of our County Boards of Elections.

· Motion to adjourn the Board of Elections Commissioners' meeting. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

Next meeting scheduled for February 10, 2021.

The meeting was adjourned at approximately 12:22 am.

**APPROVED RESOLUTION 21-03**

**JANUARY 28, 2021**

**CERTIFICATION OF DOMINION VOTING SYSTEMS' MODIFICATION TO  
DOMINION IMAGECAST EVOLUTION (ICE) v4.14.30 AND THE IMAGECAST PRECINCT  
(ICP) v4.9.13**

**WHEREAS**, Title II of Article 7 of the Election Law *inter alia* provides for the examination of and process for approving voting systems and their components for use at elections in the State of New York; and

**WHEREAS**, Dominion Voting Systems (Dominion) submitted a modification to the ImageCast Evolution (ICE) and ImageCast Precinct (ICP) scanner software; and

**WHEREAS**, SLI Compliance (SLI) conducted a secondary review of the source code testing performed by Pro V&V Labs Inc. to ascertain compliance with the provisions of the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines, the State Board's regulations, Part 6209 of 9 NYCRR, and the applicable sections of New York State Election Law; and

**WHEREAS**, the summary report of SLI Inc. was provided to the Board for consideration and has been duly considered; and

**WHEREAS**, the New York State Technology Enterprise Corporation (NYSTEC), in collaboration with SLI and the Election Operations Unit, developed a functional testing plan and executed such testing of the submitted modifications; and

**WHEREAS** the summary report of NYSTEC was provided to the Board, for their consideration and has been duly considered; and

**WHEREAS**, having considered the summary reports and the results of functional testing conducted, the Election Operations Unit recommends the certification of said system upgrade as herein defined;

- Dominion ImageCast Evolution (ICE) v4.14.30

- ImageCast Precinct (ICP) v4.9.13

; and

**WHEREAS**, the New York State Board of Elections on October 2, 2019 certified Dominion ICE firmware version 4.14.27 and in conjunction therewith the Operations Unit directed additional mandatory audit procedures pertaining to Dominion ICE Counter Review and such mandatory audit procedures, are included as step 23(e) of the *Audit Procedure for 6210.18*, version 12 (attached hereto), which remains in full effect; and

**WHEREAS**, the New York State Board of Elections issued a “Directive on Usage and Deployment of Dominion ImageCast Evolution (ICE) Hardware Upgrade” made on October 25, 2018, which remains in full effect, to wit:

(a) A Dominion ImageCast Evolution (ICE) machine shall not be assigned to serve more than 2,700 registered voters (excluding voters in inactive status); provided however, if more than one such ICE or other scanning device serves the same voters at a poll site, each additional device may be assigned to serve no more than 3,900 registered voters (excluding voters in inactive status), and

(b) Notwithstanding (a) herein, if a single ICE machine is assigned to a poll site and the number of voters served is 2,700 or less, there must be at least two scanners if more than two voters have used the BMD at a prior election at such poll site; and

**NOW THEREFORE BE IT RESOLVED** that the Commissioners of the New York State Board of Elections do hereby certify the modifications to the Dominion ImageCast Evolution and ImageCast Precinct scanner software as described above.

**Approved January 28, 2021**  
**VOTE: 4 Yes – 0 No**

**APPROVED RESOLUTION 21-04**

**JANUARY 28, 2021**

**CERTIFICATION OF CERTAIN COMPONENTS OF  
ES&S EVS 6.0.4.1 VOTING SYSTEM AND DETERMINATION NOT TO CERTIFY THE  
EXPRESSVOTE XL**

**WHEREAS**, Title II of Article 7 of the Election Law *inter alia* provides for the examination of and process for approving voting systems and their components for use at elections in the State of New York; and

**WHEREAS**, Election Systems and Software, LLC (ES&S) has submitted a voting system which contains new hardware and software components in addition to modifications to hardware and software from the previously certified ES&S voting system; and

**WHEREAS**, SLI Compliance (SLI) has conducted certification testing of said system, to ascertain compliance with the provisions of the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines, the State Board's Regulations, 9 N.Y.C.R.R. Part 6209, and the applicable sections of New York State Election Law; and

**WHEREAS**, the summary report of SLI Inc. was provided to the Board for consideration and has been duly considered; and

**WHEREAS**, the New York State Technology Enterprise Corporation (NYSTEC) has performed an independent review of the work conducted by SLI Compliance (SLI); and

**WHEREAS** the summary report of NYSTEC was provided to the Board, for consideration and has been duly considered; and

**WHEREAS**, written public comments and submissions from the applicant and public comments presented virtually at the January 14, 2021 meeting of New York State Board of Elections were duly received and considered by the Board; and

**WHEREAS**, having considered the summary reports and the results of functional testing, the Operations Unit of the New York State Board of Elections recommends the certification of certain components of said system, to wit:

- ES&S EVS 6.0.4.1 voting system components:
  - Electionware v5.2.0.0
  - DS200 Precinct-based scanner and tabulator v2.19.0.0
  - DS850 Central count scanner and tabulator v3.2.0.0
  - DS450 Central count scanner and tabulator v3.2.0.0

; and

**WHEREAS**, having considered the summary reports and the results of functional testing, the Operations Unit of the New York State Board of Elections recommends the following components of said system not be certified, to wit:

- ES&S EVS 6.0.4.1 voting system component:
  - ExpressVote XL

; and

**WHEREAS**, the following testing discrepancies, for which there are no reasonable compensating controls or mitigations, remain unresolved, to wit

(i) the ExpressVote XL as submitted for certification presently does not comply with the requirements of 9 NYCRR Part 6209.2 (f) (3) requiring that the “voting system shall display, print and store a paper record in any of the alternative languages chosen for making ballot selections”

(ii) the ExpressVote XL as submitted does not comply with the requirements of 9 NYCRR Part 6209.2 (f) (1) (iv) requiring that “the paper and electronic display of the voter’s selections shall be presented and positioned so as to allow the voter to easily read and compare the two”

; and

**WHEREAS**, having duly considered the aforesaid reports, functional testing, staff analysis and recommendations, public comments and applicant submissions:

**NOW THEREFORE BE IT RESOLVED** that the Commissioners of the New York State Board of Elections do hereby certify the following components of the ES&S EVS 6.0.4.1 voting

system; provided, however, this resolution shall not be construed to allow for the use of the DS200 hardware described herein as a precinct-based scanner and tabulator without a properly certified ballot marking device component to be used in tandem:

- ES&S EVS 6.0.4.1 voting system components:
  - Electionware v5.2.0.0
  - DS200 Precinct-based scanner and tabulator v2.19.0.0
  - DS850 Central count scanner and tabulator v3.2.0.0
  - DS450 Central count scanner and tabulator v3.2.0.0

; and

**BE IT FURTHER RESOLVED** that the Commissioners of the New York State Board of Elections do not certify the component of the ES&S EVS 6.0.4.1 voting system:

- ES&S EVS 6.0.4.1 voting system component:
  - ExpressVote XL

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**VOTE: 4 Yes – 0 No**