

**Minutes of the New York State Board of Canvassers
April 22, 2021**

The meeting of the Commissioners of the New York State Board of Elections, held remotely by WebEx, was called to order at approximately 12: 30 p.m. The meeting was chaired by Commissioner Douglas Kellner. Commissioners present were Peter Kosinski, 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.

Minutes from March 15, 2021 – Not approved, held over until next meeting.

Unit Updates:

Executive – Todd Valentine and Robert Brehm reported on several issues including:

- State Budget is now complete and there were no line item vetoes that had an impact on Election Administration from the budget.
- One million dollar increase in personal services for the State Board and increased funding to the Aid to Localities budget and capital budget for a host of eligible expenses for County Boards to upgrade equipment and make improvements to their systems.
- Worked with the State Comptroller to complete their audit of 2018 Federal Cybersecurity grant. Their final draft was given to SBOE on 4/14 and we responded on 4/20. While still considered a preliminary report and not available to the public yet, it was very positive, and we look forward to sharing its public findings.
- Continued discussions with Executive Chamber and Office of General Services in regard to space for new employees of Public Campaign Finance Board.

Legal – Kim Galvin and Brian Quail reported on activities related to the Counsel/Compliance unit including:

- Litigation status update.
- Fielded ballot access and petition questions.
- Compliance statistics.

Election Operations – Tom Connolly reported that the Election Operations unit is working on several ongoing issues including:

- Received petitions for judicial delegates and alternates and prepared the ballot access rulings for today.
- Collected local filing information from County Boards for petitions to prepare roll call and committee list after the Primary.
- Provided support for new Democratic and Republican Commissioners at Oneida County.
- Continued conversations with voter systems vendors who are looking to submit new systems in 2021.
- Tested the new configurations submitted by all three electronic poll book vendors and provided Commissioners with these testing reports.
- Working with NYSTEC and IT to formalize and document the process by which a new voter registration vendor may be approved for use by a county board.
- Sent reminders to and collected info from County Boards on testing and maintenance data required for any machine that was used in a village election in March.
- Collected all required poll book network security surveys, early voting security plans, and procedures to prevent public release of election results.

- Functional testing was completed for certification on the universal tabulator utility for ranked-choice voting submitted by New York City BOE. Testing showed a limited hardware configuration not being able to handle more than 1.1 million cast vote records. New York City needs a bigger support number, as February enrollment was just under 5.6 million this year.
- Meeting with Westchester CBOE in the near future to review an inquiry of an unusually high number of blank and void votes for 2020 General Elections.
- Discussion on hash checking, which is ensuring the software has not been tampered with or corrupted as well as ensuring the software installed on the voting machine is indeed the certified version. The issue was brought up by Commissioner Kellner after a published report from Texas's Secretary of State, and later an article published in March 2021. The issue affected the ExpressVote BMD, however the Express-Vote BMD is not presently certified for use in NYS. NYS does not rely on vendor-supplied hash checking procedures as the state creates its own checking system which uses independent hardware and software to compare the hash checks.

PIO/NVRA – John Conklin and Cheryl Couser reported that the PIO/NVRA unit is working on several issues:

- Continued meetings related to implementing online voter registration and automatic voter registration.
- Continued discussions with IT and Compliance on the public reporting application.
- Provided public reporting application webinars with special interest groups and the New York Press Service.
- Participated in a monthly ECA call.
- Reissuing the annual SANS Cyber Hygiene Cybersecurity training module for all county boards, state board personnel, and county IT staff.
- Continued virtual NYSVoter Board reviews. Conducted reviews for Cattaraugus, Chemung, Monroe, St. Lawrence, Rockland, Chenango, and Madison Counties and have been found to be compliant.
- Grant update: SFY 2021-22 budget provided for two new grant programs. Twenty-five-million-dollar capital technology fund to make improvements in election infrastructure, twenty million is allocated to the county boards of elections, and five million to the State. There is also a two million Aid to Localities Early Voting Expansion Grant.
- Contracts will go out to the counties in the upcoming days and weeks
- The HAVA Cares grant for the 2020 Election will be closed out in June 2021.
- Contacted the ten counties left that did not fully submit a Cybersecurity contract.

ITU – Bill Cross reported on projects IT is working on:

- Continue to make numerous updates and improvements to the CAPAS/FIDAS public reporting system. There are weekly releases and published a list of those updates under “Release Notes” to inform users of what has changed. Also continued work on making the CAPAS-FIDAS public reporting application search results broader and then providing the ability to filter from there.
- Worked extensively with Chief Data Officers group for the state, NYS Chief Data Officer to publish the filer data to the Open NY platform. That went live April 12th and is now being published daily.
- Working on reissuing a bid in a revised RFP format for OVR and AVR; and meeting with OGS soon for their comments. Expecting the RFP to be issued by the end of May with responses due in July.

- Several enhancements for NYSVoter system, including adding local ballot information, as well as implementing the ability to directly upload and update the counties' list of poll sites, both for election day and early voting poll sites.
- Absentee ballot online request portal was reimplemented on March 25th, as well as the accessible absentee ballot online request portal.
- Approved Cybersecurity Regulations have been posted for public comment, due June 1st.
- Continuing to work with Operations on Voter Registration systems both new and existing.
- Working with SUNY Center for Technology and Government on the future of elections infrastructure project.
- Working with NYSTEC in various counties on implementation of the Cybersecurity remediation plan, providing guidance and input in that process.

Enforcement – Enforcement Division did not attend the board meeting and did not present a unit report.

Old Business:

· Commissioner Kosinski inquired if there were any regulations or resolutions being drafted by staff for the statute requiring at least one early voting site in the municipality with the highest population in each county. Bob Brehm informed him that the Legislature had put in a bill to address this issue since the last board meeting. The Legislature hadn't considered it yet, but it had been introduced, and is in both houses.

New Business:

· Motion to adopt the Ballot Access Rulings as prepared by staff. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

(After this report was approved Comm. Kosinski asked to go back to "Old Business" for a question.)

· VOTE on Resolution 21-09 to approve the appointment of hearing officers. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

· VOTE on Resolution 21-07 to approve upgrade to E-Poll book certifications. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

· VOTE on Resolution 21-08 to adopt Part 6210.21 of the Absentee Ballot cures regulation.

Comm. Kellner asked Brian Quail for a status of the regulation. He stated the Board adopted a procedure for absentee ballot envelope cures for last year's general election and adopted an emergency regulation in January which was put out for public comment. The emergency authority will expire near the end of April and this resolution will be the permanent regulation with minor changes from the emergency regulation based on the comments.

Comm. Kosinski asked about guidance from SBOE on signature matches required by the regulation, was the guidance standardized and were poll workers also trained in signature matches. Brian Quail replied that SBOE provided a Webex webinar and a guidance document to the CBOE's for the 2020 General Election. He added there was some standardization occurring out of necessity due to the large volume of absentees at the 2020 General Election, but it was an evolving process. He was confident that a matching process was taking place because the end-of-year statistics indicated that absentees were being rejected in not insignificant numbers. He also stated that poll workers were getting training in signature matches as part of their responsibility with the poll books, but he was not sure how the CBOE's were fitting in the training. Comm. Kosinski stated he believed the signature matches were very important and they should

be implemented in a standardized way. The state board should know how the training is being done, by whom and whether it is effective.

The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

DISCUSSION and possible approval of 2021 Legislative Package

Comm. Spano stated he believed there were problems that needed to be addressed by legislation: a) failure of Enforcement to prosecute non-filers, (options could include mandating enforcement counsel prosecute nonfilers, SBOE taking back enforcement responsibilities, and/or having a moratorium and elimination of prosecution of dead wood filers); and b) SBOE has many unfilled positions and should have to ability to hire staff within 30 days of appointment irrespective of DOB approval, SBOE has immovable deadlines and responsibilities they have to meet and can't wait for bureaucracy. Comm. In regards to the enforcement counsel, Kellner stated he circulated a draft of a bill to give enforcement to both DELE and SBOE; Comm. Spano felt that was a good idea, however, such bifurcation could lead to further problems and ultimately responsibility should either be with the board or with the enforcement counsel. In regards to appointing staff, Comm. Kellner stated that he does not object to having staff draft a proposal clarifying the Board can appoint without SBOE approval; however, DOB has no authority to prevent SBOE from making hires and may have to litigate to confirm this. Both Comms. Kosinski and Spano cautioned against winning a battle but losing a war with the Executive. In regard to enforcement, Comm. Kosinski stated it is a bigger issue than just failure to file matters. The big issue is that one party controls enforcement. All election-related administration and enforcement should be done under a bi-partisan structure. Comm. Kellner stated the bigger issue for him was the "sole authority" language in the statute that created an enforcement Czar who was unaccountable. Comm. Spano agreed enforcement should be bi-partisan and all commissioners should be comfortable in how the process works. Comm. Spano said he was not comfortable with how it currently worked.

Comm. Kellner asked if there were any problems with the 19 items in the proposed package. Comm. Casale asked where the 4-year term proposal for county commissioners came from and suggested that was a local choice and SBOE should not interfere with local decision-making. He asked if the terms were uniform throughout the state. He asked it be dropped from the package. Brian Quail explained that it came from the county Election Commissioner's Association (ECA) who argue that their jobs are more complex and technologically difficult and this would promote consistency and more experienced commissioners and that the terms were not uniform, some were 2-year and some 4-year by both local decision and by statute. Comms. Kosinski, Kellner and Spano agreed to drop from the package.

Comm. Kosinski asked about the need for the measure allowing for "emergency absentee" ballots. Was this similar to other "special" ballots for poll workers, religious scruples or victims of domestic violence and was hospitalization required to qualify. Brian Quail stated that there is a problem with voters who have a medical emergency on or the day before election day who cannot get to the polls and can no longer apply for an absentee ballot. This bill was similar to the other "special" ballots; there would be an application from the voter delivered to the BOE by a third party who would then deliver the ballot to the voter and return it to the BOE in person or through the mail. Hospitalization was not required, merely an attestation that a medical emergency occurred after the absentee deadline and it prevented them from getting to the polls.

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

Next meeting scheduled for May 25, 2021.

The meeting was adjourned at 2 p.m.



New York State Board of Elections

APPROVED RESOLUTION 21-07

APPROVAL OF ELECTRONIC POLL BOOK SYSTEMS

WHEREAS, Part XX of Chapter 55 of the New York Laws of 2019 authorizes the use of Electronic Poll Book Systems (EPBS) in New York State during elections; and

WHEREAS, said chapter law provides that the State Board of Elections "shall promulgate minimum security standards" for EPBSs being used in New York State; and

WHEREAS, said chapter law provides that the State Board shall "promulgate a list of devices that are approved for use" as EPBSs during elections; and

WHEREAS, multiple vendors have submitted system modifications to be considered for approval as EPBS configurations for use in New York State; and

WHEREAS, the Election Operations Unit is tasked with evaluating the systems to ensure they meet security standards and other relevant standards; and

WHEREAS, the Election Operations Unit has conducted an evaluation of said systems, and has provided summary reports for the consideration of the Board; and

WHEREAS, vulnerability scanning was performed on the systems submitted, to the extent practicable, by staff of the State Board's Secure Election Center (SEC), and reports of their findings have been provided for the consideration of the Board; and

WHEREAS, having considered the reports and the results of evaluation conducted by the Election Operations Unit, we do hereby recommend the approval of system configurations submitted by the following vendors for use;

- KNOWiNK
- Robis

- Tenex Software Solutions, Inc.

NOW THEREFORE BE IT RESOLVED that the Commissioners of the New York State Board of Elections, at their meeting convened on April 22, 2021, do hereby approve the EPBS configurations submitted by the vendors above. Such approval is based on the specific EPBS hardware and software submitted by each vendor and reviewed by the State Board of Elections. Should the vendor make, or plan to make, any modifications or alterations to the EPBS configuration approved, such modifications or alterations shall be reviewed by the State Board of Elections for approval, consistent with all change management procedures and the use of such systems shall comply with all related State Board procedures and requirements.

BE IT FURTHER RESOLVED that counties may opt to either upgrade their equipment to one of the configurations approved today for use at the June 22, 2021 Primary Election, or continue to use the configuration previously certified on September 8, 2020. Any county opting for the latter must complete the upgrade of their equipment to the newly certified configuration not later than July 31, 2021.

Approved April 22, 2021
VOTE: 4 Yes - 0 No



21-08

**New York State Board of Elections
APPROVED RESOLUTION**

Resolution to Amend 9 NYCRR Subtitle V Part 6210 Related to Providing Voters the Opportunity to Cure Certain Absentee Ballot Deficiencies, Pursuant to State Administrative Procedures Act (SAPA) § 202

WHEREAS, on August 21, 2020, the Governor signed into law Chapter 141 of the Laws of 2020, which provided voters an opportunity to cure certain deficiencies regarding absentee ballots; and

WHEREAS, section 2 of Chapter 141 of the Laws of 2020 provides that: "(t)he state board of elections shall promulgate rules and regulations to implement this act"; and

WHEREAS, by the unanimous vote of the Commissioners present at a meeting held on January 14, 2021, the New York State Board of Elections, consistent with the section 202 of the State Administrative Procedure Act ("SAPA"), and pursuant to the authority in Chapter 141 of the Laws of 2020 and Election Law § 3-102(17), resolved that an amendment to Part 6210 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York be adopted on an emergency basis;

WHEREAS, simultaneously, the board resolved to make Part 6210 be the subject of Proposed Rule Making; and

WHEREAS, said adoption and proposed amendment of Part 6210, with accompanying submissions as required by law, were duly filed with the Department of State on January 26, 2021 and thereafter duly published in the New York State Register on February 10, 2021 (I.D No. SBE-06-21-00015-EP); and

WHEREAS, subsequent to the publication of proposed rulemaking, one public comment has been received and considered by the New York State Board of Elections; and

WHEREAS, pursuant to the public comment and further review, minor amendments to the proposed rulemaking are recommended; and

WHEREAS, such amendments would not substantively revise the proposed amendments;

NOW THEREFORE BE IT RESOLVED that the amendments of Part 6210, attached hereto, is hereby adopted and the Office of Counsel is authorized to file a Notice of Adoption indicating that such Part shall be effective upon publication in the New York State Register, and that further authority is granted to the Office of Counsel to file such other documents as may be required for the publication of such Notice of Adoption in the New York State Register and to effectuate the amendments to Part 6210 of Title 9 of the NYCRR.

Approved April 22, 2021
Vote: 4 Yes – 0 No



**New York State Board of Elections
APPROVED RESOLUTION 21-09**

**Resolution of the State Board of Elections Approving Individuals to Serve as
Hearing Officers in Conjunction with Election Law § 3-104 (5)(a)**

WHEREAS, the Election Law was modified pursuant to Chapter 55 of the Laws of 2014 to include a hearing process for certain violations of the Election Law that do not otherwise warrant a criminal prosecution; and

WHEREAS, said hearing process, as established in Election Law § 3-104(5)(a), calls for the State Board of Elections to establish a list of prospective Hearing Officers, each of whom shall have been approved by a majority vote of the Board; and

NOW THEREFORE BE IT RESOLVED that the New York State Board of Elections approves the following additional individuals to serve as Hearing Officers: Naomi Abramowitz; Richard Kass; Tom Smith; Nikki Moreschi; La'Teea Goings; and Kristina Ross.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution expires April 30, 2023.

**Approved April 22, 2021
Vote: 4 Yes – 0 No**