

Approved September 8, 2020

**Minutes of the New York State Board of Elections
May 27, 2020**

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

Minutes from February 28, 2020 and March 3, 2020 – Minutes were approved as written. The motion was approved unanimously (Commissioners Kellner, Kosinski and Spano voting in the affirmative; 3 Yes and 0 No).

Minutes from April 27, 2020 – Minutes not approved, will be reviewed at next Board meeting.

Unit Updates:

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

- Providing guidance to County Boards through weekly WebEx phone calls on how to best prepare for early voting and Election Day.
- Held kick-off session for the risk remediation program with County Boards of Election, County IT Directors, County Managers and vendors.
- The HAVA COVID-19 Grant has been rolled out to help Counties pay for unanticipated expenses to administer Federal elections for 2020 due to the coronavirus pandemic.

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

- Update on all litigation cases, including the Yang v. Kosinski matter, which resulted in the Presidential Primary being reinstated for June 23, 2020.
- Implementation of Resolution 20-08 which determines that the New York City Campaign Finance Board (“CFB”) meets the prerequisites outlined in Election Law §14-105 to allow candidates who file disclosure statements with the CFB to not have to file with the State Board.
- Finishing the Election Law Update to include recent decisions from the Court of Appeals.
- Preparing draft regulations for Public Campaign Finance Board.

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

- Planning with Counties to hold multiple election events on the same day, including issues with poll books, on-demand printing, and programming the machines for multiple election events.
- Working with other agency staff to develop guidance regarding conducting an election during the COVID19 pandemic for County Boards, poll sites, and poll workers.
- Compiling early voting sites and hours to provide to the Office of Court Administration who will assign Judges to those sites.
- Collecting data from county boards of elections regarding their readiness for the June 23rd primary, including confirmed poll sites and poll workers.
- Collecting data related to absentee ballot applications received by county boards of elections.

- Finalized the testing of voting systems matrix with vendors, which maps out the required state regulations and laws related to voting systems.
- Continues weekly discussions with vendors for status and to determine if any other actions are necessary in relation to voting systems.

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

- Posting continuous updates on the relevant COVID-19 Executive orders and affected elections.
- Kicked off the HAVA Care COVID-19 Grant as well as Election Cybersecurity Remediation Grant Program, providing contracts and guidance to County boards.
- Coordinated with the United States Post Office to assist counties and confirm the standard consumer applications and ballot envelopes were turned into return paid postage envelopes and for applications and ballot returns.

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

- Online voter registration has been placed on hold, due to Budget bulletin on April 28th which has frozen capital funds.
- Completed enhancements to NYSVOTER for absentee and voter history in order to look for duplicates, which will be conducted shortly after Primary Election.
- Meetings with Department of Homeland Security to develop content for tabletop meetings in July.

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

New Business:

- VOTE on Resolution 20-09 to approve resolution on absentee ballot processing. The motion was approved unanimously (Commissioners Kellner, Kosinski, and Spano voting in the affirmative; 3 Yes and 0 No).
- VOTE on Resolution 20-12 to approve resolution on accessible absentee balloting. The motion was approved unanimously (Commissioners Kellner, Kosinski and Spano voting in the affirmative; 3 Yes and 0 No).
- VOTE on Resolution 20-10 to approve resolution of privacy booths at poll sites. The motion was approved unanimously (Commissioners Kellner, Kosinski and Spano voting in the affirmative; 3 Yes and 0 No).
- VOTE on Resolution 20-11 to approve resolution relating to Test Deck procedures. The motion was approved unanimously (Commissioners Kellner, Kosinski and Spano voting in the affirmative; 3 Yes and 0 No).
- Next board meeting is scheduled for June 30, 2020.
- Motion to hold executive session.
- Motion to adjourn the meeting. The motion was approved unanimously (Commissioners Kellner, Kosinski, and Spano voting in the affirmative; 3 Yes and 0 No).

The meeting was adjourned at 2:00 p.m.



APPROVED RESOLUTION 20-09

Resolution on Absentee Ballot Processing

WHEREAS, Election Law § 8-400 et seq. provide for absentee ballots,

WHEREAS, pursuant to Executive Orders 202.15, 202.23 and 202.28 the absentee balloting process has been modified by the Governor, and

WHEREAS, pursuant to Election Law § 3-102, the New York State Board of Elections is empowered to, among other things, “issue instructions...relating to the administration of the election process,” and

WHEREAS, the uniform application of the absentee balloting process is essential to the election process, and

NOW THEREFORE BE IT RESOLVED: that the New York State Board of Elections does hereby adopt the following instructions:

- Executive Order 202.23, issued on April 24, 2020, requires County Boards of Elections to mail absentee ballot applications to all eligible active and inactive voters. Executive Order 202.28 provides that a County Board of Elections may amend the absentee ballot application form it mails to eligible active and inactive voters so as to limit the application to the June 23, 2020 primary or special election. Amending the absentee ballot application form is discretionary; it is not mandatory.
- Regardless of whether the absentee ballot application is amended, any absentee ballot application that is received from the Executive Order 202.23 mailing and any applications received electronically, telephone, email or internet shall only be valid for the June 23, 2020 primary or special election
- Executive Order 202.28 did not disturb the status of voters that are in permanent absentee ballot status prior to the aforementioned Executive Orders. If a voter has been in permanent absentee ballot status, the voter shall continue to receive an absentee ballot for all applicable elections, including the General Election in November 2020.
- A voter may still request, at any time, to be placed in permanent absentee ballot status through any statutorily valid means, including the Executive Order 202.23 mailing other than through an absentee ballot application that was obtained through modified conditions (electronically, telephone, email or internet) from any EO issued.

- A voter may request to receive an absentee ballot for any statutorily valid reason for the November 2020 General Election through any valid means other than through an absentee ballot application that was obtained through modified conditions (electronically, telephone, email or internet) from any EO issued or that they received through the Executive Order 202.23 mailing.
- Any name change or address transfer requested by a voter along with their absentee ballot application which is not in the form of a signed document should be treated in like manner as a letter request pursuant to Election Law § 8-400 (2) (d) such that a ballot and application form shall be sent to such voter at the address requested. Any requested name change or address transfer shall be finally effectuated by the duly signed returned application and the related ballot will then be entitled to be canvassed. Nothing in this guidance should be interpreted to prevent a name change or address transfer by any other method authorized by law.
- A voter in inactive status requesting a ballot for the June 23, 2020 primary be sent to the voter's address on record with the board of elections shall not be required to provide any additional information to receive an absentee ballot. An inactive voter who submits an absentee ballot application on paper shall be reactivated as provided by governing law. An inactive voter who requests a ballot by any means that does not require a signature shall be provided an absentee ballot to the full extent required by the operative Executive Orders but shall not be, or remain, reactivated unless such ballot is returned, providing on the oath envelope a written attestation of residency.
- A voter may not designate an agent to receive an absentee ballot on their behalf except by using the paper absentee ballot application. The application signed by the voter may be delivered to the board in hard copy, or by fax or email.
- Only a voter applying for their own ballot may make an application using the enhanced methods of applying for an absentee ballot provided by Executive Orders. Such voter must be the person that makes the application, and it must be communicated to such voter that the representations on the application are subject to penalties of perjury if knowingly false. Nothing in this guidance should be interpreted to mean that a voter cannot receive assistance from any person of their choosing in the application process.

**Approved May 27, 2020
VOTE: 3 Yes – 0 No**



Approved Resolution 20-12

Resolution on Accessible Absentee Balloting for June 23, 2020 Elections

WHEREAS, Election Law § 8-400 et seq. provide for absentee ballots,

WHEREAS, pursuant to Executive Orders 202.15, 202.23 and 202.28 the absentee balloting process has been modified by the Governor; and

WHEREAS, Executive Order 202.15 expands the population of who can request an absentee ballot to every New Yorker for the June 23, 2020 primary and special election by providing that “due to the prevalence and community spread of COVID-19, an absentee ballot can be granted based on temporary illness and shall include the potential for contraction of the COVID-19 virus for any election held on or before June 23, 2020;” and

WHEREAS, voters without disabilities can vote absentee ballots privately and independently by marking the paper absentee ballots by hand in a private setting at their residence or other location of their choosing; and

WHEREAS, voters who are blind, or who have similar visual disabilities, do not have the same opportunity to vote privately and independently at their residence or other location of their choosing; rather, such voters must go out in public amid the COVID-19 pandemic, use a ballot marking device at a poll site, or at a board of elections office, in order to vote privately and independently, and

WHEREAS, the June 23, 2020 election is occurring in the context of the global COVID-19 pandemic with respect to which the risks to certain persons with disabilities are greater than to the population at large, and as a result of which all voters are encouraged to vote by absentee ballot, and

WHEREAS, it is necessary under governing law to make reasonable accommodation for private in-home voting for persons with disabilities to ensure the fundamental right to vote and the State Board of Elections believes the above makes such accommodations; and

WHEREAS, the State Board of Elections will attempt to go even further to assist such voters; and

NOW THEREFORE BE IT RESOLVED: that the New York State Board of Elections, for the June 23, 2020 elections, do hereby adopt the following instructions to county boards of elections:

1. Boards of Elections shall provide by email an “accessible PDF ballot” to any voter who provides a declaration that they are blind or otherwise disabled such that they would be prevented from independently completing a paper absentee ballot without travelling to a board of elections, early voting site or poll site on election day.

2. Any voter seeking an accessible PDF ballot shall request such a ballot on or before the seventh day before the June 23, 2020 primary and special election. The declaration requesting such ballot shall be made under penalty of perjury and shall attest that the applicant has a disability, without specifying same, and thereby requires the accessible PDF ballot. A form of such declaration (attached) shall be available on the website of the New York State Board of Elections in an accessible format.

3. The declaration may be submitted to the voter’s board of elections by mail, email or hand delivery.

4. Upon receipt of the request, the board of elections will generate a screen readable ballot (readable by Job Access with Speech “JAWS” software) which shall include insertion of tags and fillable objects so that it can be completed independently and privately by the requesting individual using standard, accessible technology, namely a screen reader program. The accessible ballot PDF shall meet WCAG 2.0 AA standards for a PDF.

5. The ballot will be provided with accessible instructions on how to return the ballot – including instructions to place the ballot in an envelope and sign the back of the envelope. A postage paid envelope and oath envelope will be provided to the voter by mail and, in addition, an envelope template that can be printed shall be provided by email. To the extent practicable the accessible PDF ballot and electronically provided envelopes shall be in the same general form as provided to UOCAVA voters.

6. Upon completion of the ballot the voter shall return the printed accessible PDF ballot using the United States postal service or hand delivery to the board of elections.

7. Any ballot requested, completed and returned pursuant to this method shall be canvassed in accordance with laws. All relevant laws and procedures related to securing the secrecy of the vote at all stages shall be followed.

**Approved May 27, 2020
VOTE: 3 Yes – 0 No**



APPROVED RESOLUTION 20-10

Relating to a Reduction of Privacy Booths at Poll Sites for the June 23, 2020 Primary and Special Elections

WHEREAS, on March 7, 2020, Governor Cuomo issued Executive Order 202, declaring a state disaster emergency for the entire State of New York because of the COVID-19 outbreak; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic; and

WHEREAS, three days later, the President of the United States declared a national emergency under Proclamation 9994 in response to the COVID-19 pandemic; and

WHEREAS, since the outbreak, the Centers for Disease Control and Prevention (CDC) has issued guidance on how to prevent the spread of the COVID-19 virus, which includes “physical distancing” (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>); and

WHEREAS, according to the CDC, physical distancing includes: staying at least 6 feet away from other people; not gathering in groups; staying out of crowded places; and avoiding mass gatherings; and

WHEREAS, for the June 23, 2020 primary and special election, County Boards of Elections will be required to arrange poll sites to provide for adequate physical distancing for voters pursuant to CDC guidelines; and

WHEREAS, in order for poll sites to achieve adequate physical distancing protocols, County Boards of Elections will need flexibility from the minimum number of privacy booths as outlined in 9 NYCRR § 6210.19; and

WHEREAS, 9 NYCRR § 6210(e) provides that the “State Board of Elections may authorize a reduction in the number of privacy booths provided in these regulations upon application of a county board of elections(;)” and

WHEREAS, virtually every County Board of Elections will require reductions in the number of privacy booths in order to accomplish physical distancing at poll sites; and

WHEREAS, receiving and determining applications for privacy booth reductions from all 58 local boards of elections would be an administrative burden on county boards of elections and the State Board of Elections at a time when resources are stretched; and

WHEREAS, Executive Order 202.15 expands the population of who can request an absentee ballot to every New Yorker for the June 23, 2020 primary and special election by providing that' "due to the prevalence and community spread of COVID-19, an absentee ballot can be granted based on temporary illness and shall include the potential for contraction of the COVID-19 virus for any election held on or before June 23, 2020;" and

WHEREAS, it is anticipated that more voters will opt to use absentee ballots for the June 23, 2020 primary and special election, reducing traffic at in-person election day poll sites and early voting sites.

NOW THEREFORE BE IT RESOLVED: that given the references above; including Executive Order 202 from Governor Cuomo, the Presidential Proclamation; the WHO global pandemic declaration; and CDC physical distancing guidance, the State Board of Elections shall deem that all local boards of elections have requested a reduction of the number of privacy booths at its poll sites; and

BE IT FURTHER RESOLVED, that the State Board of Elections determines that local boards of elections may reduce the number of privacy booths at their poll sites as necessary in order to accomplish physical distancing protocols as provided for in CDC guidance.

**Approved May 27, 2020
VOTE: 3 YES – 0 NO**



APPROVED RESOLUTION 20-11

Relating to Test Deck Procedures for the June 23, 2020 Primary and Special Elections

WHEREAS, on March 29, 2020, as a result of the COVID-19 pandemic, Governor Cuomo issued Executive Order 202.12, which rescheduled the presidential primary from April 28, 2020, to June 23, 2020, the same date as the traditional federal and state primary for New York State; and

WHEREAS, pursuant to the same Executive Order, the special election for Congressional District 27 was also rescheduled to June 23, 2020; and

WHEREAS, as a result of the dates of these elections being combined, many local boards of elections are required to create a multitude of ballot styles within its jurisdiction; and

WHEREAS, pursuant to 9 NYCRR 6210.8(b), the State Board of Elections has issued test deck procedures for local county boards of elections to follow in relation to their voting systems; and

WHEREAS, because the presidential and federal and state primaries are consolidated as a result of the COVID-19 pandemic, the test deck procedures for the multitude of ballot styles is causing a hardship for certain county boards of elections; and

WHEREAS, the COVID-19 pandemic has stretched resources of local county boards of elections; and

WHEREAS, the main goals of New York's test deck procedures are: verifying the election programming of voting systems so that ballots and vote selections are properly scanned and tabulated; ensuring the proper functioning of voting equipment (BMD, scanner, peripherals, etc.); and testing of certain scenarios to ensure that the appropriate message to voter is displayed; and

WHEREAS, local boards of elections who utilize central-count hardware that share the same Election Management System programming as their precinct scanners and ballot marking devices are able to leverage their central-count hardware to perform certain

test deck procedures while maintaining the main goals of New York's test Deck procedures; and

WHEREAS, utilizing central-count hardware in relation to test deck procedures will alleviate the increased volume of testing made necessary by the multiple elections being held on June 23, 2020 and the Early Voting period preceding it.

NOW THEREFORE BE IT RESOLVED: that the Election Operations Unit is authorized to amend the State Board of Elections Test Deck Procedures, as provided for in 9 NYCRR 6210.8(b), to permit local boards of elections, who utilize central-count hardware that share the same Election Management System programming as their precinct scanners and ballot marking devices, to leverage their central-count hardware to perform certain test deck procedures.

Approved May 27, 2020
VOTE: 3 YES – 0 NO