

**Minutes of the New York State Board of Elections
September 12, 2022**

A meeting of the New York State Board of Commissioners was held at the office of the New York State Board of Elections, 40 North Pearl Street, Albany, New York in the 5th Floor conference room and was called to order at approximately 12:16 p.m. The meeting was chaired by Commissioner Douglas Kellner. Commissioners present were Peter Kosinski, Anthony Casale, and Andrew Spano. Staff members present were Kristen Zebrowski Stavisky, Todd Valentine, Brian Quail, Tom Connolly, Brendan Lovullo, Jennifer Wilson, John Conklin, and Mike Haber.

I. Certification of Election Results from August 23, 2022 Special Elections

The Board of Canvassers met to approve the special election results from August 23, 2022. **The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).**

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

The Board of Canvassers was adjourned, and the meeting of State Board of Elections was convened at 12:19 p.m.

Minutes from August 15, 2022 - Minutes were approved as written. **The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).**

Unit Updates:

Executive –Todd Valentine and Kristen Zebrowski Stavisky reported on several items including:

- Renovation of Board facilities on track to begin February 2023.
- Continued biweekly meetings with Division of Budget, Office of General Services, Enforcement and Executive Chamber, and monthly calls with Election Commissioners Assoc.
- Planning a full day event on envisioning election future in December for the Board.

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

- Collected statements of canvass from county boards for the August primary and two Congressional Special elections.
- Finalizing the certification of the November ballot. Sample ballots for Dominion and ES&S that will show the layouts for all Supreme Court Justices will be provided to the counties.
- Voting systems and vendors update.

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

- Litigation update.
- Compliance statistics.

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

- Answered high volume of calls on redistricting and eligibility to vote in the Primary and Special.
- Participated in a Hearing that was held regarding the Board’s policy on holding remote meetings.
- Waiting on final quotes for ballot proposal to be printed in newspapers in all New York State counties.

ITU – Michael Haber reported on projects IT is working on:

- Began the process from development of an interim solution to ensure Online Voter Registration (OVR) is available as planned by May 2023.
- Updates are in progress to the Public Reporting site to enhance usability based on user feedback working with PIO and Compliance.
- Participated in Tabletop The Vote national election exercise which was conducted by the federal Cybersecurity and Infrastructure Security Agency (CISA) over the course of three days.

Old Business:

- None.

New Business:

· VOTE on Resolution 22-16 to approve the electronic poll book system upgrades. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).**

· VOTE on Resolution 22-17 to approve the Open Meetings Law policy. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).**

· VOTE on Resolution 22-18 to approve the certification of Clear Ballot Group’s upgrade to ClearCount Central Count Voting System. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).**

· 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 October 25, 2022.

The meeting was adjourned at approximately 1:46 p.m.



New York State Board of Elections

APPROVED RESOLUTION 22-16

APPROVAL OF ELECTRONIC POLL BOOK SYSTEM UPGRADES

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
 - o Pollpad v. 3.2.0 / iPadOS v. 15.6.1

- Robis
 - o AskED ePollbook v. 3.4.144.3 / AskED Command Center v. 6.0.74

- Tenex Software Solutions, Inc.
 - o Precinct Central Touchpad v. 5.1.7 / Console v. 3.22.07.105925 / iPadOS v. 15.6.1

NOW THEREFORE BE IT RESOLVED that the Commissioners of the New York State Board of Elections, at their meeting convened on September 12, 2022, do hereby approve the EPBS aforementioned 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 utilizing one of the two vendor systems described above may opt to either upgrade their equipment to one of the configurations approved in this resolution for use at the November 8, 2022 General Election or continue to use the most recently approved configuration for each system. Any county opting for the latter option must complete the upgrade of their equipment to the newly certified configuration before being used in a subsequent election.

**Approved September 12, 2022
VOTE 4 YES – 0 NO**



**New York State Board of Elections
APPROVED RESOLUTION 22-17**

WHEREAS, by passing Part WW of Chapter 56 of the Laws of 2022 (“Chapter 56”), the New York State Legislature amended Section 103 of the Open Meetings Law; and

WHEREAS, Part WW of Chapter 56 adds Section 103-a of the Open Meetings Law, permitting the New York State Board of Elections to authorize its commissioners to attend meetings by videoconferencing from non-public locations under extraordinary circumstances; and

WHEREAS, Section 103-a(2)(a) requires the New York State Board of Elections to adopt a resolution following a public hearing authorizing the limited use of videoconferencing under such circumstances; and

WHEREAS, Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of commissioners are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend”; and

WHEREAS, Section 103-a(2)(c) requires that commissioners be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances . . . including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting”; and

WHEREAS, in accordance with Section 103-a(2)(d), any commissioners attending by videoconference must, except during executive session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

WHEREAS, Section 103-a(2)(g) requires that any meeting where a commissioner attends by videoconference be recorded, posted to the New York State Board of Elections webpage within five business days, and transcribed upon request; and

WHEREAS, Section 103-a(2)(h) requires that members of the public be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

BE IT RESOLVED, that the New York State Board of Elections authorizes its commissioners who experience an extraordinary circumstance, as described above, as further defined by the procedures attached herein, and, as factors or events arise which, in the exercise of the commissioner's discretion, preclude that commissioner's physical attendance at such meeting, to attend meetings by videoconference: (i) as long as a quorum of the commissioners attend in-person at one or more locations open to the public; (ii) as long as the commissioner can be seen, heard, and identified while the open portion of the meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

RESOLVED, that the New York State Board of Elections adopts the attached herein with respect to the use of videoconferencing by the New York State Board of Elections' commissioners in compliance with Part WW of Chapter 56 of the Laws of 2022.

Approved September 12, 2022
VOTE 4 YES – 0 NO

Procedures for Commissioner Videoconferencing
Pursuant to Public Officers Law § 103-a

In compliance with Public Officers Law (POL) § 103-a(2)(a), the New York State Board of Elections, following a public hearing, authorized by resolution on August 15, 2022 the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing member and public attendance.

1. New York State Board of Elections commissioners shall be physically present at any meeting locations of the New York State Board of Elections that is duly noticed unless such commissioner is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.
2. For purposes of these procedures, the term “extraordinary circumstances” may include disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which, in the exercise of that commissioner’s discretion, precludes the commissioner’s physical attendance at such meeting.
3. If a commissioner is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the commissioner shall notify the Co-Executive Directors of the New York State Board of Elections as soon as practicable. The commissioners should attempt to notify the Co-Executive Directors no later than four business days prior to the scheduled meeting in order for proper notice to the public to be given; however, if an extraordinary circumstances occurs within four days of a meeting, the Co-Executive Directors shall update its notice as soon as practicable to include that information.
4. If there is a quorum of commissioners participating at a physical location(s) open to the public, the New York State Board of Elections may properly convene a meeting. A commissioner who is participating from a remote location that is not open to in-person physical attendance by the public shall not count toward a quorum of the New York State Board of Elections but may participate and vote if there is a quorum of commissioners at a physical location(s) open to the public.
5. Except in the case of executive sessions conducted pursuant to POL § 105, the New York State Board of Elections shall ensure that its commissioners can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon.
6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, commissioners

participated by videoconferencing from a private location due to such extraordinary circumstances.

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.
8. The New York State Board of Elections shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the New York State Board of Elections website within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.
9. If commissioners of the New York State Board of Elections are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the New York State Board of Elections shall provide the opportunity for members of the public to view such meeting by video, and, when there is a public hearing, or when public comment is required by law, to participate in proceedings by videoconference in real time where public comment or participation is authorized. The New York State Board of Elections shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in-person participation or testimony.
10. Open meetings of the New York State Board of Elections conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103(f) and shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, “disability” shall have the meaning defined in Executive Law § 292.
11. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during any state disaster emergency declared by the governor pursuant to Executive Law § 28 or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to § 24 of the Executive Law, if the New York State Board of Elections determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the New York State Board of Elections to hold an in-person meeting.
12. These procedures shall be conspicuously posted on the New York State Board of Elections website



New York State Board of Elections

APPROVED RESOLUTION 22-18

**CERTIFICATION OF CLEAR BALLOT GROUP'S UPGRADE TO
CLEARCOUNT CENTRAL COUNT VOTING SYSTEM**

WHEREAS, ClearBallot Group, Inc. (ClearBallot) has submitted an upgrade to the hardware and software used in conjunction with their ClearCount central count optical scan voting system for certification; and

WHEREAS, SysTest Labs Inc. (SLI) has conducted a security review, technical data package (TDP) review and source code review of the modification, 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 NYCRR, and the applicable sections of New York State Election Law; and

WHEREAS, the summary reports of SLI Inc. are herewith provided to the Board, for their consideration; and

WHEREAS, the New York State Technology Enterprise Corporation (NYSTEC) has reviewed all test plans, test cases and test results used by the EOU and verified the security requirements reviewed by SLI; and

WHEREAS the summary reports of NYSTEC are provided to the Board, for their consideration; and

WHEREAS, having considered the summary reports and the results of functional testing conducted by the Election Operations Unit, we do hereby recommend the certification of said system upgrade as herein defined;

- ClearCount v. 2.2

NOW THEREFORE BE IT RESOLVED that the Commissioners of the New York State Board of Elections, at their meeting convened on September 12, 2022, do hereby certify the upgrade to the ClearCount system as described above.

NOW THEREFORE BE IT FURTHER RESOLVED that the use of such system shall be contingent on compliance with compensating procedures to be subsequently adopted by the Operations Unit of the New York State Board of Elections to address each discrepancy identified in the functional and systems findings by SLI Compliance.

Approved September 12, 2022
VOTE 4 YES - 0 NO