

**Minutes of the New York State Board of Elections
October 13, 2015**

The meeting of the Commissioners of the New York State Board of Elections held at the offices of the New York State Board of Elections, 40 North Pearl Street, Albany, New York in the 5th Floor Conference Room was called to order at 12:00 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Doug Kellner, Andrew Spano and Gregory Peterson. Staff members present were: Robert Brehm, Todd Valentine, Kathleen O’Keefe, Kimberly Galvin, Bill McCann, Anna Svizzero, Brendan Lovullo, John Conklin, Tom Connolly, Mark Goldhaber and Risa Sugarman. The guest list is attached.

Minutes of September 1, 2015—were approved. **(The motions were approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.))**

Confidential Executive Minutes of September 1, 2015- were approved. **(The motions were approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.))**

Unit Updates:

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

- Preparing submission of the budget which is zero growth.
- Will need to put together a budget side letter to ask for additional resources.
- Response was received from the New York City Board concerning poll site management issues.
- Meeting with the Election Commissioners Association to start planning the agenda for the Winter Conference in January.

Legal – William McCann and Kathleen O’Keefe reported on activities related to the Counsel/Compliance Unit including:

- Compliance is working on the 2015 Primary and General Election Reports.
- Testing with work groups on the CAPAS/FIDAS upgrade will begin the end of October and beginning of December.
- Education Outreach and Training are working with the College of St. Rose’s Communication Department in developing a three part campaign finance webinar.
- The LLC lawsuit has been fully submitted to the court.
- There have been several Women’s Equality Party challenges which the Board is taking a no position on.
- Looking at both voting machine vendor contracts concerning a maintenance and support contract.

Election Operations – Anna Svizzero reported that the Election Operations unit is working on:

- Certified the ballot for the General Election.
- Wrapping up the clear ballot certification testing for the central count system. Public test will be held on Friday.
- Working with County Boards on their building of ballots due to the two new official parties.
- Working with the IT department on updating the CAPAS/FIDAS system.

PIO/NVRA –Tom Connolly and John Conklin reported that the PIO/NVRA unit is working on several issues.

- Attended the NYSVoter Refresh and CAPAS/FIDAS meetings
- Participated in the ECA monthly call.

- Tom Connolly assisted the County Boards with sending out the military absentee ballots.
- Meetings held with the IT Dept. concerning the election night reporting.

ITU – Mark Goldhaber reported on projects IT is working on:

- Internal CAPAS/FIDAS meetings are being held to get specific requirements.
- Focus groups will start coming in to test the CAPAS/FIDAS program.
- Made progress this last month on infrastructure upgrades to support the new projects.

Enforcement – Risa Sugarman reported on the Enforcement Unit:

- Has an opening for an Investigator.
- Preparing reports for the Hearing Officer.
- Attended meetings on the CAPAS/FIDAS upgrades.

Old Business:

- The update on the FOIL requests for voter registration records will be tabled until next board meeting.
- The update on Independent Expenditures revised regulations will be held over to next meeting. Kathleen and Bill are working on a draft.
- VOTE on an advisory opinion to permit a candidate to use campaign funds to pay rent for his campaign office. **The motion was approved (Commissioners Kosinski, Spano and Peterson voting in the affirmative, Commissioner Kellner recused himself; 3 Yes and 1 Recused)**
- VOTE on a formal opinion on fair market value. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.)**

New Business:

- VOTE to adopt regulation Part 9 NYCRR 6203 relating to the administration of oaths, examination of witnesses and issuance of subpoenas for purposes of conducting investigations. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.)**
- VOTE to adopt regulation Part 9 NYCRR 6218 relating to civil enforcement hearing procedures. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.)**
- VOTE to adopt regulation designating persons to file Notices of Adoption with the Department of State. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.)**
- VOTE on Resolution to pay New York State Dispute Resolution Association for the year 2015 in reference to HAVA Administrative Complaint Procedures. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.).** Staff will look into other alternatives.
- VOTE to change the date on the HAVA Administrative Complaint Procedure Resolution to read 2015. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.).**
- VOTE on Resolution to submit 2016 federal primary calendar issues to the Department of Justice and Federal Court. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.).**
- VOTE on Resolution Authorizing testing of ES&S voting system upgrades. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.).**

- VOTE to go into Executive Session. **The motion was approved unanimously (Commissioners Kosinski, Kellner, Spano and Peterson voting in the affirmative; 4 Yes and 0 No.)**
- The next board meetings will be November 17th and December 15th 2015.

Executive Session:

- **VOTE** to authorize the Chief Enforcement Counsel's to serve subpoenas pursuant to Election Law subdivision 5 of section 3-102 and 3-104 (3) in relation to Case # E23-27/2015. **The motion was approved. (Commissioners Kellner, Spano and Peterson voting in the affirmative, Commissioner Kosinski voted in the negative. The vote was 3 Aye and 1 Nay).**

The meeting was adjourned 3:10 p.m.

New York State Board of Elections
APPROVED RESOLUTION – October 13, 2015

**Resolution Repealing Part 6203 and Adopting a New Part 6203
Relating to Administration of Oaths, Examination of Witnesses and
Issuance of Subpoenas For Purposes of Conducting Investigations,
Directing Publication of Notice of Adoption And Authorizing
Addition of Such Part to Title 9 of the NYCRR, Pursuant to Section
202 of the State Administrative Procedure Act**

WHEREAS, by the unanimous vote of the Commissioners present at a meeting held in Albany, New York, on April 16, 2015, the New York State Board of Elections pursuant to the authority of Election Law §§ 3-104(8), 3-102(1), 3-102 (17) resolved that a repeal of Part 6203 and the adoption of a new Part 6203 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York be the subject of a Notice of Proposed Rule Making; and

WHEREAS, said proposed repeal and adoption of a new Part 6203 with accompanying submissions as required by law were duly filed with the Department of State on July 29, 2015 and thereafter duly published in the New York State Register on August 12, 2015 (ID Number SBE-32-15-00024-P), and

WHEREAS, no public comment has been received with respect to such proposed Part and it is unchanged since publication;

NOW THEREFORE BE IT RESOLVED that the existing Part 6203 is repealed, and a new Part 6203, 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 addition of Part 6203 to Title 9 of the NYCRR.

Approved October 13, 2015
VOTE 4-0

New York State Board of Elections
APPROVED RESOLUTION – October 13, 2015

**Resolution Adopting Part 6218 Relating to Civil Enforcement
Hearing Procedure, Directing Publication of Notice of Adoption
And Authorizing Addition of Such Part to Title 9 of the NYCRR,
Pursuant to Section 202 of the State Administrative Procedure Act**

WHEREAS, by the unanimous vote of the Commissioners present at a meeting held in Albany, New York, on April 16, 2015, the New York State Board of Elections pursuant to the authority of Election Law §§ 3-104(8), 3-102(1), 3-102 (17) resolved that a new Part 6218 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York be the subject of a Notice of Proposed Rule Making; and

WHEREAS, said proposed Part with accompanying submissions as required by law were duly filed with the Department of State on July 27, 2015 and thereafter duly published in the New York State Register on August 12, 2015 (ID Number SBE-32-15-00003-P), and

WHEREAS, one public comment has been received with respect to such proposed Rule which has resulted in a non-substantial changes in the language of the proposed Part 6218, *to wit* correcting the statutory reference to section 301 [1] of the State Administrative Procedure Act to 307 [1] thereof in the proposed 6812.04 [e];

NOW THEREFORE BE IT RESOLVED that the new Part 6218, 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 addition of Part 6218 to Title 9 of the NYCRR.

Approved October 13, 2015
VOTE – 4-0

New York State Board of Elections
APPROVED RESOLUTION – October 13, 2015
Resolution Designating Persons Authorized to
Certify and File Notices of Adoption of Rules with
the New York State Secretary of State

WHEREAS, the certification and filing of a Notice of Adoption with the New York Secretary of State is a ministerial action required to make effective rules and regulations duly adopted by the State Board of Elections, and

WHEREAS, the Secretary of State requires such notices filed on behalf of boards and commissions of the state be “certified” by persons “duly authorized in writing filed with the New York State Department of State,” and

WHEREAS, it has been the practice of the agency that such notices of adoption be certified and filed variously by the co-executive directors; counsels or deputy counsels;

NOW THEREFORE BE IT RESOLVED that the Co-Executive Directors are hereby authorized to send a letter to the Secretary of State duly authorizing in writing the co-executive directors, counsels and deputy counsels to certify and file rules and regulations duly adopted by the New York State Board of Elections.

Approved October 13, 2015
VOTE 4-0

New York State Board of Elections APPROVED RESOLUTION – October 13, 2015

RESOLUTION AUTHORIZING AND APPROVING THE USE OF A SUM NOT TO EXCEED \$12,500 FROM THE FEDERAL OPERATIONS GRANT FUND – 290VM STATE OPERATIONS FOR EXPENSES RELATED TO HAVA ADMINISTRATIVE COMPLAINT ALTERNATIVE DISPUTE RESOLUTION SERVICES (ARBITRATION); AND

WHEREAS, the New York State Board of Elections (hereinafter “the Board”), is legally required by Title IV of the Help America Vote Act of 2002, and the NYS Election Law Section 3-105 and the rules and regulations promulgated thereunder (section 6216 et seq), to provide for alternative dispute resolution services (arbitration) for complaints relative to Title III of HAVA; and

WHEREAS, the proposed program procedures and general cost structure for the period of January 1, 2015 through December 31, 2015, are the same as the approved submission for January 1, 2014 through December 31, 2014; and

WHEREAS, the Counsel’s office requests that the Board authorize and approve a sum not to exceed \$12,500 from the Federal Operations Grant Fund – 290VM State Operations for expenses related to the annual administrative costs and any arbitrator program orientation expenses for alternative dispute resolution services (arbitration) relative to HAVA Title III complaints,

NOW, THEREFORE, BE IT RESOLVED that the State Board does hereby authorize and approve a sum not to exceed \$12,500 from the Federal Operations Grant Fund – 290VM State Operations for expenses related to the 2015 administrative costs and any arbitrator program orientation expenses for alternative dispute resolution services (arbitration) relative to HAVA Title III complaints.

**Approved as Amended October 13, 2015
VOTE 4-0**

New York State Board of Elections
APPROVED RESOLUTION – October 13, 2015

**Resolution Authorizing Application For Supplemental Remedial
Order Establishing A Federal Election Calendar That Complies
With the Federal MOVE Act and the Permanent Injunction Issued
by the United State District Court, Northern District, on January
27, 2012.**

WHEREAS, annexed hereto is a proposed calendar of dates related to the Federal elections to be held in 2016 along with a description of provisions in the Election Law which need to be superseded to provide for MOVE Act compliance in accordance with the Injunction issued by Judge Sharpe dated January 27, 2012, and

WHEREAS, the dates and provisions therein are substantially similar to the changes requested and made part of the December 12, 2013 Supplemental Remedial Order, excepting the deadlines relating to independent nominations, and

WHEREAS, these adjustments to the political calendar are necessary to comply with the Order of Injunction issued by Judge Sharpe dated January 27, 2012 related to MOVE Act compliance;

NOW THEREFORE BE IT RESOLVED that the office of counsel is authorized to apply to the United States District Court, consistent with the continuing jurisdiction of that court, for a supplemental remedial order in accordance with the annexed document describing the political calendar and necessary changes thereto.

Approved October 13, 2015
VOTE 4-0

New York State Board of Elections
APPROVED RESOLUTION – October 13, 2015
RESOLUTION TO PERMIT TESTING OF UPGRADE FOR
ELECTION SYSTEMS & SOFTWARE Version 5.6.0.1

WHEREAS, the New York State Board of Elections is in receipt of a request from Election Systems & Software (ES & S) to upgrade their Election Management System, DS 200 precinct-based scanner firmware, DS 850 central count scanner firmware; and

WHEREAS, the upgrades described in the request have been reviewed by County Board of Elections staff, with comments in support of same having been received; and

WHEREAS, this upgrade would address numerous County Board needs, as well as the vendor's proposed overall system enhancements;

NOW THEREFORE BE IT RESOLVED that the New York State Board of Elections authorizes the testing for the upgrade request made by Election Systems & Software's Election Management System DS 200 precinct-based scanner firmware and the DS 850 central count voting system firmware.

Approved October 13, 2015
VOTE 4-0