

**Minutes of the New York State Board of Elections
October 25, 2018**

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 12:05 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Andrew Spano and Gregory Peterson. Staff members present were: Robert Brehm, Todd Valentine, Brian Quail, Kim Galvin, Nick Cartegena, Bill McCann, Tom Connolly, Brendan Lovullo, John Conklin, Cheryl Couser, Bill Cross and Risa Sugarman. Guest in attendance were:

Minutes of August 8th, August 22nd, September 7th, September 12th and October 3rd, 2018 – The motion was 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:

- Cyber Security is our main focus.
- Looking for more space for IT staff and Secure Election Center staff.
- Hired three vendors to work on Cyber Security.

Legal – Kim Galvin reported on activities related to the Counsel/Compliance Unit including:

- There are more than 10 non-valid ballot access cases out-standing.
- Compliance has done 100,000 reviews since their inception.
- Working on the final adoption of the Independent Expenditure regulations.

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

- Sample ballots were provided to the County Boards.
- Provided machines for the Self Advocacy Association of NYS conference.
- Completed the certification of the Dominion ICE voting machine.

PIO/NVRA – John Conklin reported that the PIO/NVRA Unit is working on several issues.

- Released press releases ahead of the election.
- Met with two international observers for the Organization for Security Cooperation in Europe.
- NVRA visited 8 county boards since the last meeting.

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

- NYSVoter Refresh Project is now completed.
- Discussions with Center for Technology and Government (CTG) on cyber security.
- Tom Connolly and I presented at the NYSLGITA conference.

Enforcement– Risa Sugarman had nothing to report on the Enforcement Unit.

Old Business:

- VOTE to adopt the draft opinion on childcare. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- VOTE to adopt Part 6200 Independent Expenditure. **The motion was approved unanimously, (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**

New Business:

- VOTE on the resolutions for the Dominion ICE voting machine. **The motion was approved unanimously, (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- VOTE on resolution for funds for IT maintenance. **The motion was approved unanimously. (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- DISCUSSION was held on the letter from NYC Democracy that was sent to voters,
- The next board meeting is scheduled for December 14th.

Executive Session:

- There was no Executive Session.

The meeting was adjourned at 2:45p.m.



18-11

New York State Board of Elections APPROVED RESOLUTION – October 25, 2018

RESOLUTION AUTHORIZING THE EXPENDITURE OF A SUM NOT TO EXCEED OF \$60,000 FROM THE STATE OPERATIONS HAVA FUND FOR PAYMENT OF THE COSTS ASSOCIATED WITH THE CISCO AND VMWARE SERVICE AGREEMENT RENEWAL

WHEREAS the New York State Board of Elections (State Board) has been actively engaged in implementing the Help America Vote Act (HAVA); and

WHEREAS the State Board is in the process of purchasing continued Cisco and VMWare support for the NYSVoter system; and

WHEREAS the NYSVoter system is built using Cisco and VMWare technologies and these firms provide the State Board with on-going technical support; and

WHEREAS this resolution is necessary due to the anticipated costs associated with such a procurement; and

NOW THEREFORE BE IT RESOLVED that the Board does hereby approve the above-referenced request of the Information Technology Unit for the expenditure of such funds not to exceed of \$60,000 from the State Operations HAVA Fund for payment of costs to acquire Cisco and VMWare Support.

Approved Oct. 25, 2018

VOTE 4-0

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

Resolution to Amend 9 NYCRR Subtitle V Part 6200 Related to Updating Such Part to Reflect Statutory Changes As Required By Part JJJ of Chapter 59 of the Laws of 2018 Pursuant to State Administrative Procedures Act (SAPA) § 202

WHEREAS, on April 12, 2018, the Governor signed into law Chapter 59 of the Laws of 2018, concerning, among other things, modifications and additions to the laws relating to the disclosure of Independent Expenditures; and

WHEREAS, by the unanimous vote of the Commissioners present at a meeting held in Albany, New York, on May 3, 2018, the New York State Board of Elections pursuant to the authority of Election Law §§ 14-107 (5-a), 14-107-b and 3-102(17), resolved that an amendment to Part 6200 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York be the subject of Proposed Rule Making; and

WHEREAS, said proposed amendment of Part 6200 with accompanying submissions as required by law were duly filed with the Department of State on May 8, 2018 and thereafter duly published in the New York State Register on May 23, 2018 (I.D No. SBE-21-18-00047-P); and

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

WHEREAS, pursuant to public comments, amendments to the proposed rulemaking were recommended;

WHEREAS, by the unanimous vote of the Commissioners present at a meeting held in Albany, New York, on August 8, 2018 the New York State Board of Elections pursuant enacted Emergency Rulemaking that incorporated the

amendments to Part 6200 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York on an emergency basis; and

WHEREAS, simultaneously, the Commissioners voted unanimously to issue a Notice of Revised Proposed Rulemaking related to the amendments to Part 6200; and

WHEREAS, a Notice of Emergency Adoption and Revised Rule Making related to amendments of Part 6200 with accompanying submissions as required by law were duly filed with the Department of State on August 10, 2018 and thereafter duly published in the New York State Register on August 29, 2018 (I.D No. SBE-21-18-00047-ERP); and

WHEREAS, subsequent to the publication of revised rulemaking, public comments have been received and considered by the New York State Board of Elections; and

WHEREAS, pursuant to public comments, minor amendments to the revised rulemaking are recommended; and

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

NOW THEREFORE BE IT RESOLVED that the amendments of Part 6200, 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 6200 of Title 9 of the NYCRR.

Approved Oct. 25, 2018
Vote 4-0

New York State Board of Elections
APPROVED RESOLUTION – October 25, 2018

**CERTIFICATION OF DOMINION VOTING SYSTEMS' UPGRADE TO
IMAGECAST OPTICAL SCAN VOTING SYSTEM**

WHEREAS, Dominion Voting Systems (Dominion) has submitted an upgrade to the ImageCast hardware and firmware used in conjunction with their Democracy Suite Election Management System 4.9 for certification; and

WHEREAS, SysTest Labs Inc. (SLI) has conducted a security review, technical data package (TDP) review and source code review of the system, including test results conducted by NTS 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 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 Election Operations Unit (EOU) has conducted functional testing of said system, and has provided a summary report, for the consideration of the Board; 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;

- ImageCast Evolution – ICE hardware (PCOS-410A)
- ImageCast Evolution - ICE ballot box (BOX-410A)
- ImageCast Evolution – ICE application v4.14.25

NOW THEREFORE BE IT RESOLVED that the Commissioners of the New York State Board of Elections, at their meeting convened on October 25, 2018, do hereby certify the upgrade to the Dominion ImageCast scanner and ballot marking device.

Approved Oct. 25, 2018

VOTE 4-0

New York State Board of Elections APPROVED RESOLUTION – October 25, 2018

DIRECTIVE ON USAGE AND DEPLOYMENT OF DOMINION VOTING SYSTEMS'

IMAGECAST EVOLUTION (ICE) HARDWARE UPGRADE

WHEREAS, the Dominion ImageCast Evolution (ICE) hardware upgrade has been submitted for certification to be used as a ballot scanner and ballot marking device, and

WHEREAS, the aforesaid ICE machine cannot be used as a ballot marking device and as a ballot scanner at the same time while preserving the privacy of the voter using the equipment as a ballot marking device, and

WHEREAS, the New York State Board of Elections has completed a preliminary analysis which shows that the capacity of an ICE machine to process ballots, based on an anticipated use of such device as a ballot marking device in keeping with a high use scenario, is such that the device should not be allocated for use by more than a voter population of 2,700, and

WHEREAS, it is anticipated that in the near future a version of the ICE hardware will be submitted for certification in a configuration where it will be able to serve as a BMD and while permitting scanning of ballots simultaneously, thus a permanent amendment to the regulations of the board of elections (i.e. 9 NYCRR 6210.19) is not advisable;

WHEREAS, 9 NYCRR § 6210.19 (c) (2) requires county boards of elections to furnish additional accessible voting devices when “the number of persons historically using such devices warrant additional devices,” and

WHEREAS, Election Law 3-102 (1) empowers the Commissioner of the State Board of Elections to “issue instructions...relating to the administration of the election process...,” and

NOW THEREFORE BE IT RESOLVED that county boards of elections are hereby DIRECTED that a Dominion ImageCast Evolution (ICE) machine shall not be used for ballot scanning when in use as a ballot marking device, and the following additional requirements shall apply:

(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.

Approved Oct. 25, 2018

VOTE 4-0