

**Minutes of the New York State Board of Elections  
March 10, 2009**

The meeting of the Board of Canvassers of the New York State Board of Elections was convened at the offices of the New York State Board of Elections, 40 Steuben Street, Albany, New York in the 4<sup>th</sup> Floor Conference Room and was called to order at 2:15 p.m. The meeting was chaired by Commissioner James Walsh. Commissioners present were Douglas Kellner, Evelyn Aquila and Gregory Peterson.

- The Board of Canvassers considered a motion to approve the Certification of amended election results for the November 4, 2008 General Election for NYS Senate District 11, electing Senator Frank Padavan; and, results from Jefferson, Monroe, Nassau, the City of New York, Suffolk, Ulster and Westchester counties. There was a discussion noting that it is anticipated that election results for New York County will be further amended by the Board of Elections in the City of New York and that staff will be authorized to post the results as they come in and the State Commissioners will formally certify the results at the next meeting. **The motion was approved unanimously (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

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 Steuben Street, Albany, New York in the 4<sup>th</sup> Floor Conference Room and was called to order at 2:20 p.m. The meeting was chaired by Commissioner James Walsh. Commissioners present were Douglas Kellner, Evelyn Aquila and Gregory Peterson. Staff members present were: Stanley Zalen, Todd Valentine, Kim Galvin, Paul Collins, William McCann, Elizabeth Hogan, Anna Svizzero, Joseph Burns, John Conklin, Robert Brehm, George Stanton, and Patrick Campion. The guest list is attached.

The minutes of February 3, 2009 were considered. **A motion was approved unanimously to accept the minutes as written (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

**Unit Updates:**

**Executive** – Stanley Zalen and Todd Valentine reported on several issues including:

- Nominating documents and an independent petition was received relating to the March 31, 2009 Special Election in the 21<sup>st</sup> Congressional District. The objection calendar may necessitate a Board Meeting to provide an objection determination. Discussion followed tentatively setting March 25<sup>th</sup> for such meeting.

**Legal** – Kim Galvin reported on activities related to the Legal Unit including:

- We continue to respond to calls related to village elections and the vacancy in the NYS 20<sup>th</sup> Congressional District.
- The Legal Unit has worked to prepare the proposed 2009 Legislative Packet that will be considered under Old Business.
- Work continues between State Board staff and the staff of the Governor's Office of Regulatory Reform (GORR) on the process to move the proposed amended regulations (Part 6200, Part 6210.18, and Part 6217.5(C)). We had a productive meeting with Commissioners Peter Quinn and Bill Fruci discussing, among other things, Part 6210.18.
- The weekly telephone conference calls with Department of Justice are ongoing.
- A stipulation of discontinuance was ordered in the case of Murawski v State Board of Elections.

**Election Operations** – Anna Svizzero reported that the Election Operations unit is working on several ongoing issues including:

- The State Board received notice from the EAC this past Friday restoring SysTest's accreditation. Also, we received a preliminary plan from SysTest which broadly outlines their efforts to get testing back on track. We are reviewing that plan and working on developing a new time line. There was a discussion on the status of the certification testing program.
- On February 23<sup>rd</sup> we received a proclamation from Governor Paterson calling for a special election in the 20<sup>th</sup> Congressional District to be held on March 31<sup>st</sup>.
- We received and processed election results in the 11<sup>th</sup> NYS Senate election, which made up the certification by the Board of Canvassers at the beginning of today's meeting.
- Status meetings between the State Board and NYSTEC on the voting system certification testing program are ongoing.
- Annual report data continues to be submitted by county boards, with staff are working to compile the information for our own post-election report to the EAC and Congress.

**PIO/NVRA** – John Conklin reported on several ongoing projects in the PIO/NVRA unit including:

- We continue to respond to calls related to the vacancy in the 20<sup>th</sup> Congressional District. A detailed political calendar is posted on the website that lists the candidates.
- Preparation for the annual conference is underway. Invitations have gone out to County Boards and vendors.
- Follow up meetings have been conducted with New York State Broadcasters Association and New York Network concerning PSA's for the voter education and outreach program.

**Campaign Finance** - Elizabeth Hogan reported on several ongoing projects in Campaign Finance and Enforcement, including:

- The scanning project is underway with the initial project kick-off meeting taking place on Friday, March 6<sup>th</sup>. The vendor picked up 25-30 boxes for the initial scanning.
- The filer handbook is expected to go to the printer on Friday.
- The training seminars are scheduled and will begin in the middle of May.
- A lawsuit was initiated for the non-filing of the January 2009 Periodic Filing. There were 456 named on the Order to Show Cause.

**ITU** – George Stanton reported on several issues, including:

- The Oracle database has been updated and the updates for security and to software were made to NYSVoter system.
- Commissioner Kellner asked about the status of New York City's use of NYSVoter. George stated that there are still questions on how New York City is going to do the online voter maintenance and we were waiting for a response from a representative of the NYCBOE.

### **Old Business:**

- Kim Galvin and Paul Collins presented the State Board's Legislative packet to the Commissioners. **The motion was approved unanimously (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

**New Business:** The Commissioners discussed several issues including:

- Bob Brehm presented a resolution to allow the transfer of funds that were authorized in the budget. The resolution authorized transferring a sum not to exceed \$120,000 from the Federal / Aid to Localities Health and Human Services Fund – 265 Poll Site Accessibility Account and transferring a sum not to exceed \$585,000 from the Federal / Aid to Localities Federal Operating Grants Funds – 290 HAVA Implementation Account to the State Operations Account of the State Board for the development of a program to raise voter awareness of the voting process, with the NYS Broadcasters Association and New York Network/SUNYSAT (copy attached). **The motion was approved unanimously (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**
- There was a discussion with Erie County Election Commissioners Ralph Mohr and Dennis Ward concerning a request by the Erie County Board of Elections to conduct a pilot program using the new optical scan voting equipment during the March village elections. Commissioner Mohr reported on the proposed plans to conduct the pilot election. However, he indicated that there was no resolution on the table for consideration by the State Commissioners because the voting system vendor indicated that they were not prepared to support a pilot election in the village election. The State Commissioners thanked Commissioners Mohr and Ward for their efforts to coordinate and plan to conduct the pilot election.

- Commissioner Kellner discussed the Special Election in Richmond County in which a Court Order amending the ballot was issued at 2:30 on the Monday afternoon before the election that started at 6 a.m. The election was conducted using paper ballots. A motion was made for the Elections Operations Unit to review the special election in Richmond County and to provide a report for the State Board and for the county election commissioners on the issues that arose there as a result of using paper ballots for the conduct of the election. **The motion was approved unanimously (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**
- Commissioner Kellner spoke about a report from California where a group of citizen observers (the Humboldt County Transparency Project) completed a post-election audit and were unable to account for 200 votes. In their search, they found that the Premier election management system had a glitch in it where the first batch of ballots that was run through that system was deleted, not only from the final accounting – but deleted from any record as if it had never existed.
- The next board meetings were tentatively scheduled for Wednesday March 25<sup>h</sup> and Tuesday, April 7<sup>th</sup>, 2009

The Commissioners then made a motion to go into Executive Session to discuss campaign finance investigation reports and determinations enforcement cases, including a discussion with the Erie County Election Commissioners pertaining to an investigation issue; and, to discuss the voting system contracts. **(Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

**The meeting went into Executive Session at 3:21 p.m. The meeting went back into regular session at 3:50 p.m.**

There was a motion to accept counsel's recommendation to table Enforcement Cases: CMP06-72, CMP07-56, 07-69, 07-119, and 07-123; to refer CMP06-19/SC08-01 to the District Attorney of Tompkins County; to merge CMP07-04 into an already open investigation; and to close the remaining cases. **The Commissioners voted unanimously to approve the motion. (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

Commissioner Peterson made the following statement concerning a briefing by staff on the continuing contract amendment discussions that have been had by the State Board of Elections staff, OGS staff and both ES&S and Sequoia, the two voting system vendors. After taking in all of the circumstances surrounding this certification effort and what still needs to be done to make the use of these systems viable in 2009, we are authorizing the staff to continue with the negotiations and the terms as they have been outlined to us.

We are confident that it is no longer a question of 'if' these systems will be certified for use in New York State, but 'when' they will be certified as such. As we understand it, most of the changes to come in this certification process will be in the form of software changes and

modifications and not hardware changes. These contract amendments will put the State in the best position to be fully ready for deployment and use when certification is granted.

The motion before the Board is to allow the staff to continue to negotiate the terms and conditions outlined in Executive Session. **The Commissioners voted unanimously to approve the motion. (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

Paul Collins read the following resolution for consideration by the Commissioners:

Whereas upon the suspension of SysTest's accreditation by the EAC, a stop work order was issued by this Board; and

Whereas SysTest's accreditation has been restored;

BE IT RESOLVED that the previously issued stop work order to SysTest be in same hereby is rescinded and SysTest is directed to proceed with its contract.

**The Commissioners voted unanimously to approve the resolution. (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**

There was a motion to adjourn at 3:55 p.m. **The Commissioners voted unanimously to approve the motion. (Commissioners Kellner, Walsh, Aquila and Peterson voting in the affirmative; 4 Yes and 0 No).**