

3/26/2008 NYS Board of Elections Transcript  
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>> DOUGLAS KELLNER: Good afternoon.

My name is Douglas Kellner, cochair of the State Board.

I call this meeting to order.

The first, we will act as the Board of Canvassers.

And I will ask the other Commissioners to introduce themselves.

>> HELENA MOSES DONOHUE: Helena Donohue.

>> JIM WALSH: Jim Walsh.

>> EVELYN AQUILA: Evelyn Aquila.

>> DOUGLAS KELLNER: And our staff?

>> TODD VALENTINE: Todd Valentine.

>>: Allison Carr.

>>: Paul Collins

>>: Pat --

>>: --

>>: Anna Svizzero

>>: Greg

>>: Lee Daghlian.

>>: Bob Brehm.

>>: Bill McCann,

>>: Liz Hogan

>>: Stan Zalen.

>>: Tara Graves.

>> DOUGLAS KELLNER: I ask our guests to

>>: State Assembly.

>>: Bob Warren.

>>: --

>>: --NYSTEC.

>>: --NYSTEC.

>>: --NYSILC.

>>: Amy Almo, League of Women Voters.

>>: -- Patricia.

>>: Bob Eckels.

>> DOUGLAS KELLNER: Thank you all.

Welcome to our guests.

The first item on the agenda as the Board of Canvassers is the certification of election results for the special election in the 48th Senate district that took place on February 26, 2008.

>> STANLEY ZALEN: The winner as the statistical figures show was, is Darrell J Orbiteen.

There are two documents for the commissioners to sign.

I'll start one at one end and one at the other end.

>> DOUGLAS KELLNER: All right.

That concludes the business of the Board of Canvassers.

Now we'll meet as the Commissioners of the Board of Elections.

First item of business is approval of the minutes of February 15 and February 27.

I had one question about the minutes.

It reports that Commissioner Kelleher had resigned.

Is that accurate, that he actually resigned?

>> TODD VALENTINE: No, actually his term would have ended, is probably more an accurate description.

His term end understand and we were pending replacement.

>> DOUGLAS KELLNER: Then on the February 15 minutes, the fourth line, that should just be corrected then.

>> TODD VALENTINE: Resignation by the end of the term.

>> EVELYN AQUILA: Completion of his term?

>> DOUGLAS KELLNER: Or to fill, who replaces Commissioner Kelleher.

How about James Walsh, who replaces Commissioner Kelleher?

>> EVELYN AQUILA: That's easier.

>> DOUGLAS KELLNER: With that change, I would move the adoption of the February 15 minutes.

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There was no response.)

>> DOUGLAS KELLNER: February 25 minutes, all those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

Those minutes are adopted.

We will have unit updates.

**First from the co-Executive Directors.**

>> TODD VALENTINE: We do have three positions to be filled at this time.

They are listed on the agenda.

>> DOUGLAS KELLNER: Commissioner Donohue, you want to make a motion?

>> HELENA MOSES DONOHUE: I move that we fill the three positions of Kim Galvin to Deputy Director of Election Ops, Bob Eckels to Supervising Investigative Auditor, Vikki Pietruccia to Investigative Auditor.

>> EVELYN AQUILA: May I ask, are they present?

>> TODD VALENTINE: They are present here.

>> EVELYN AQUILA: I would like to see who they are.

(Laughter.)

>> TODD VALENTINE: That's a good idea.

>> EVELYN AQUILA: Who is who?

>>: I'm Vikki Pietruccia.

>> TODD VALENTINE: Bob is the tall one.

(Laughter.)

>> EVELYN AQUILA: Congratulations, yes.

>> DOUGLAS KELLNER: Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

The positions are filled.

>> EVELYN AQUILA: It's nice if we see who the people are in the office.

You meet someone in the elevator.

You feel like a fool, you don't know their names.

That was my reason for that.

>> TODD VALENTINE: We share obviously their descriptions through their resumes prior.

>> EVELYN AQUILA: Yes, the resumes.

>> TODD VALENTINE: But putting a face to the name is always helpful.

>> DOUGLAS KELLNER: Todd and Stanley, do you have anything else to report?

>> STANLEY ZALEN: Just to mention, Commissioners, that when Anna reports she will be bringing up a request by Sequoia for a late addition to the

Addition to the agenda for hardware change and this board will have to decide first if it wants to entertain that late addition to the agenda and then, if it does, how to vote on it, obviously.

>> TODD VALENTINE: A couple other things.

We are in the process of setting up a regularly scheduled conference call with county boards, you know, starting with the Executive Committee.

It was partially at their request and partially at our request as we go through this spring and into the summer, they would ask to try to

Normally our meetings are scheduled three times a year.

They wanted something that would be a bit more quicker to respond.

Rather than just a newsletter to which nobody can ask a question, Stanley and I agreed to set up a regularly scheduled conference call.

The first one we are tentatively set for the 31st and then starting just with the Executive Committee and see how it goes from there.

Basically it would be an update of what we're doing and if they have questions.

We do get questions and setting up this forum might be a little easier to disseminate that information.

>> EVELYN AQUILA: Todd, are they going to give you an agenda for the call or outline of some of the things that they want to bring up?

Is it going to be very just, you know

>> TODD VALENTINE: I think there should be a brief agenda if there's a particular topic for that week.

Otherwise it will be a quick status report as to where we're at as far as testing and if we have information on the delivery schedules for machines.

>> EVELYN AQUILA: Yeah.

>> TODD VALENTINE: For example, they'll hear about the change to the Sequoia hardware which affects a lot of counties.

That's only come up to the board today, but whether it impacts anybody is really there's no delay in the delivery schedule and Anna will get into that more.

>> EVELYN AQUILA: I thought if you had more of an outline, the telephone calls won't be wasted.

>> TODD VALENTINE: No.

It's designed to be very quick and to be to the point, not a rambling long thing.

>> EVELYN AQUILA: You want to have some exactness to it and proper information.

So if you know there's a question there and say only Anna can give you the answer or only Allison can give you the answer, you have the opportunity to get that answer ahead of time.

>> TODD VALENTINE: Have the answer there on the phone or ahead of time, absolutely correct.

Just an update on here on the building, you know, we are

We've reviewed the change in floor plans for, particularly on the fifth floor.

Those going back to OJES, we are waiting for revised drawings to come back to us.

This morning, I know you got this by e mail and it probably wasn't shared with you because we got it this morning, the New York City Commissioners have invited all of you and staff,

I believe, to their legislative luncheon scheduled for April 15, I believe.

It's up here in Albany.

I didn't think you would want to come, but ...

>> EVELYN AQUILA: We are going to be seeing everybody two weeks later.

>> TODD VALENTINE: Right.

But they have a program and they've invited you.

It's on April 15.

So that was the, like a last minute thing.

Related to the special election so you know, there's a vacancy that now the 118th Assembly District because that Assemblyman was elected to the Senate.

We haven't heard anything about a special election at this point, but that vacancy is there.

Pat will have a, Pat Tracy will have a budget update later and we'll also have a report on the acceptance testing which has started.

We have had delivery of some machines.

That has begun.

Thank you.

>> DOUGLAS KELLNER: Thank you, Todd.

**We'll turn to Allison carr from the legal department.**

>> ALLISON KERR: Thank you, Commissioners.

It's been quiet for a change since I started this job, since the vendor cases ended.

>> EVELYN AQUILA: Not good.

>> ALLISON KERR: However, we have been busy.

There were a lot of telephone calls with regard to the March 18 village elections.

A lot of telephone calls regarding election law in general at the same time I understand it was discussed, the idea of revitalizing Todd's case log practice that he used to do here.

And I like it.

What I have been doing is going through all the cases that we have in our units' files and updating the status.

And once I'm finished, and I am almost finished, I will give it to Paul so that Paul can add his cases to it and their status.

It will be included in every board packet from now on for the commissioners' education.

As far as the cases we have, really the only activity is the HAVA case.

We still do our regular status meetings, conference calls and status reports on the files.

We are completely on schedule with the Court's remedial order.

Other than that, there was small activity this week in the Independence party cases venued in Nassau and Rensselaer counties.

Those have been removed to Nassua County and there is a court conference scheduled on the 31st so the Courts on both cases can schedule their orders.

I don't have anything to add unless the Commissioners

>> STANLEY ZALEN: There was a second case.

>> ALLISON KERR: Sorry, Todd, I apologized.

Todd went and argued the price case in the second circuit Court of Appeals. That was on March 13.

My understanding is that no decision has been rendered yet.

Is that correct?

>> TODD VALENTINE: That's correct.

Stanley went down to the city with me as well.

That was a case with regard to whether or not absentee ballots should be allowed for county committee.

Currently that's the only office not allowed on the absentee ballot.

We

The case was dismissed at the District Court level.

The plaintiffs appealed to the second circuit.

That's what we argued.

>> EVELYN AQUILA: We are arguing for or against?

>> TODD VALENTINE: We are arguing for the statute, which says that they are not on there.



>> EVELYN AQUILA: As someone who was a county committee member for eons, I think they should be allowed to be on there.

There's a lot of names.

>> DOUGLAS KELLNER: It's expensive.

>> EVELYN AQUILA: I know it's extensive and expensive.

>> TODD VALENTINE: We are defending the statute, but the expense was not an issue.

We focused on the need for finality on election date because the committee terms end on election day.

They need to be filled within seven days after the primary.

You don't have a county committee if you have absentee ballots. It becomes an intersection of the ability to get an

absentee ballot which the courts have said is not actually part of your right to vote versus an associational right of the party

and the State many years ago now opted for just that office to restrict that ability to get absentee ballots.

>> ALLISON KERR: Another one of Todd's cases, Logan versus Fargo, we received a Notice of Appeal on February 13, which wasn't good, actually.

The date don't start totally until February 5 because of rule 4.

There's an intent

Well, a Notice of Appeal has been filed, but no actual appeal has been perfected yet in that case.

We are just waiting on that one to see what happens.

>> DOUGLAS KELLNER: All right.

Thank you, Allison.

>> STANLEY ZALEN: Allison, does Paul want to add anything?

>> ALLISON KERR: Anything?

>> PAUL COLLINS: Not really, other than the

No, I don't want to belabor that.

>> DOUGLAS KELLNER: Did DOJ comment?

>> PAUL COLLINS: Yes, they did.

I don't know, we received apparently a request from Cattaraugus County to entertain their changing their selection

of the machines and that came up in this Monday's DOJ conference that Kim and I sat in on.

And their position was essentially the same as it had been earlier when Erie County wanted to change their choice.

That ship has sailed.

That door is closed, et cetera.

So that's pretty much where DOJ is.

As all of the Commissioners know, we are under specific court order with deadlines and dates.

Those dates have come and gone.

>> EVELYN AQUILA: So DOJ said absolutely not?

>> PAUL COLLINS: DOJ said that the time has come and gone for that.

>> DOUGLAS KELLNER: Thanks, Paul.

>> EVELYN AQUILA: Thank you, Paul.

>> DOUGLAS KELLNER: All right.

**Next report is Anna Svizzero for election operations.**

>> ANNA SVIZZERO: Thank you, Commissioners.

We didn't have too much news to report.

The special election was wrapped up, as you see.

The new Senator was seated based on the unofficial results we shared with you at our last meeting.

Sorry about the lag, but the timing wasn't consistent with the board's agenda.

We have begun to receive annual reports from our county boards.

We are posting those to the spread sheets that we will be distributing once all the county boards have reported.

We spent some time fielding phone calls concerning the training needs that counties had with regard to the new ballot marking devices.

I'm not sure that the vendors grasp that they needed to provide this training prior to the delivery of the machines and they promised to deliver the machines by the 31st of March.

The two concepts were a little bit inconsistent, but we did ask county boards to speak with their vendors and review those

needs and try to get requisitions to OGS by the 20th of March.

OGS reported this morning that not every county has done that.

The time line deadline for that task for issuing purchase orders for those items is the 31. We are expecting that we can still meet that.

OGS will provide a list of who has submitted their list of training requisitions and we can follow up with the counties that have not yet done that.

We conducted a vendor conference call to discuss with the vendors who are in the BMD world the acceptance test

process that we have here at this central location in Albany and also to review the labeling of certain information that

they've shared, user guides and end user manuals, et cetera, that still claim to be proprietary and confidential.

We shared emails with these vendors who have understood that these documents are to be distributed liberally without regard for confidentiality or proprietary labels on them.

But when a new set of documents arrived, they were still labeled that way.

We proposed that the counsel's office draft a memo which waives the vendors' claim in that regard so that each vendor

would sign the same document and there would be no ambiguity in the understanding of what the State board

expected and what the RFP required and what the vendors would be agreeing to.

We will work with the counsel's office on getting prepared for those vendors.

With regard to the escrow of vendor software, we have completed in house, Kim was very helpful in this regarding.

Kim and NYSTEC in bringing all of our in house meetings to a resolution.

Paul Collins is reviewing the final document to make sure there are no loose ends to it so we'll get it to the board.

It's an contract with Iron Mountain for the cost of escrowing software.

The cost of escrowing will be borne by the vendors so there is no cost involved on the State board's part in bringing that contract up.

But I will leave it to Paul and Allison to bring it to you at the next meeting.

The Plan B acceptance testing.

We did get the opportunity to review our procedures this past week.

Excuse me.

50 Automarks, ES&S provided for the delivery of 50 Automarks to New York City.

They were used machines.

They were on loan to them so they could begin in house training in some of the outreach efforts.

We required them to be acceptance tested even though they wouldn't be used in live elections.

We had the opportunity to put our procedures into effect and will be reviewing those.

Bob Warren is here and he's certainly welcome to speak to the board if the Commissioners have any question about that process.

Tom Wood from NYSTEC was instrumental in drafting those initial testing procedures.

We will be reviewing them to make sure that what we saw in concept works in the real world, at least as far as those 50 devices went.

Once that's done we'll bring that procedure back and share it with you and also with the county

boards because there is a role for county boards to play in acceptance testing if they choose to.

They are welcome to come and to test some of their own machines.

The concept of the a test deck would be introduced to them in that forum so it begins to make its way into their mainstream of operations as well.

We are reviewing and revising our process as it pertains to plan A acceptance testing.

Now that we know the systems that are actually in the realm of certification, especially with regard to the Dominion Image

Cast device, the systems that the county boards actually have in place now will actually be their lot one device.

We've gone back to the drawing board to determine how to do the regression testing that's required on those devices once the tabulation components are certified.

We are revising that process and revising the budget that accompanies it.

We will have some additional information to share with the board as we move forward on this, probably at the next

meeting we'll have a draft that is based on some discussion with Bob Warren and his staff.

We haven't really had the chance to debrief them yet.

Kim will be on board by then.

I think it's fair to have both of us working on that process to make sure that what we come up with is something that is agreeable in the building and also to all the county boards.

We continue to work with SYStest and NYSTEC in our status meetings.

NYSTEC is working with them in conference calls offline and sharing those to bring the master plan and the requirements matrix to completion.

SYStest is confident that they can meet that deadline for the test plan which I believe is April 10.

NYSTEC has been very diligent in following up with them.

NYSTEC has suggested that perhaps a face to face meeting is in order.

We haven't figured out if they plan to go to Colorado or if they would require SYStest to come here.

But we do have work to do in that regard.

But we do see that resolution happening in a timely way.

We are hoping to fill three positions that we have had slotted for our unit.

Those persons would obviously help with the acceptance testing but also be available to assist county boards in building

test decks which is a concept that is absolutely foreign to boards who don't already do that with the absentee system that they may have in place in certain counties.

We would also like them to, if the board is still agreeable, to offer that programming of county board ballots.

We had talked about that at the board level, whether there would be a fee for that or not.

It's for the Commissioners to decide, But certainly if they thought that was a task we would undertake, that's something

we would want to share with the county boards in the near future so they can plan accordingly for their own staff, either

training in that regard or have us fill in that gap in their operations or whether they would still pay the vendor to do that programming.

We've reviewed vendor accounts.

We will be posting the SYStest bills for the lot two testing, ballot marking device testing and sharing those balances on a monthly basis with vendors.

However, we do want to move forward with the TDP review and the required hardware testing and some of the vendors have less money than others in their accounts.

So we are proposing that all the accounts be brought up to a certain funding level to ensure that there is money on hand to

cover these costs and that the bills that would be submitted for any of this testing would directly come out of vendor accounts

and the State board wouldn't have to front that money out of any other hoof account that we do

HAVA account that we do have.

Some vendors have more money in their escrow account than others because they started with more than one system and

they dropped one or two of the systems so the funds remained in the escrow account.

We also have worked with NYSTEC to extend the two contracts they have with us, which are listed on your agenda for action in a subsequent part of this meeting.

And also the generic costs that the State board is bearing with regard to test plan preparation, et cetera.

We need to get additional funding for that, which is also on your agenda for action.

And that fund would also cover any of the source code testing for the firms that have open source and we do have one who does, Dominion has open source software.

And we have an official withdrawal from Avante.

They are pulling all of their systems out of the certification.

We forwarded that information to SYStest.

They are wrapping up that invoice and should have it to us shortly.

The Avante team will be picking up all of the equipment that they have here as well as in Colorado.

We have a firm that has requested certification on more than one occasion.

IBS is the name of the firm.

They have a DRE voting system.

They were deemed initially nonresponsive by OGS and as recently as this past week are again deemed nonresponsive by OGS.

We will be scheduling a demonstration of their system here.

It's a courtesy, if you will, that we extended to every vendor prior to the contract process, RFP process for the lot one and lot two.

But I think that will help the IBS firm understand better what our requirements are.

There seems to be this huge gap in what they read, how they interpret what they read, their conversations with OGS and

although we have had only one or two brief conversations with them, don't seem to have made an impact on requirements

and how those actually come to be.

We have also been working with county boards to get the 5 percent matching funds into OGS.

I don't think anyone is here from OGS to report on that and they did not provide a status sheet as to who had done that.

That process is ongoing and we will continue to monitor it to be sure that everyone is current with that deposit at OGS and I don't think I have anything else.

>> DOUGLAS KELLNER: Evelyn?

>> EVELYN AQUILA: Anna, I have two things to say.

Number one, I think that meeting between SYStest and NYSTEC should take place.

I think that's important.

I'm appalled at reading the newspapers that all over this country where machines are failing.

And states are really sorry they made purchases without testing.

So since we are testing, I want to make sure that that testing is the best.

So I think, you know, the two of them getting together to speak to one another face to face, even for a few hours on pertinent issues is very important.

So I would encourage that.

And the second thing, I just think it's a good idea to ask them to get all their accounts up to date.



Right now we see the State budget isn't in good shape and our budget I'm not sure is in such good financial shape.

I think they have to meet their obligations and we should keep after them.

That's really all, Anna.

Thank you so much for all you do.

>> ANNA SVIZZERO: Thank you.

>> DOUGLAS KELLNER: Okay.

I have five things I want to raise.

(Chuckles.)

>> DOUGLAS KELLNER: The first is the status of the requests that I have been making to actually get the test data

for the ballot marking device tests that were used as the basis for the certifications that we voted on at the last meeting.

>> ANNA SVIZZERO: We spoke to SYStest yesterday.

Glen Trujillo indicated he would be comfortable with sharing those persons here at the State board who signed

confidentiality statements, but is reluctant to share the information, share that information posted or otherwise

because of a business proprietary claim that they make that it would compromise their status as an ITA.

They said yesterday that they would go back and talk amongst themselves and send us something prior to this board meeting.

I came up here at quarter to 12 and haven't seen it yet.

I have nothing to share with you other than that their initial offer was to share it with those who signed confidentiality statements

(Noise near microphone).

(Very loud noise drowning out voices).

>> DOUGLAS KELLNER: I regard this as a very serious issue.

I don't know if you have seen the e mail that I sent last week, Anna, responding to SYStest.

My personal response to what SYStest had proposed when they said they were going to get us the test data if we signed

confidentiality agreements, I found it really outrageous because the RFP requires that the test data be provided to the Board of Elections.

The RFP also provides that the rules of the freedom of information law would govern proprietary data.

So that if a vendor or SYStest is claiming that there is a legitimate proprietary reason for confidentiality, then it would

be processed in accordance with the freedom of information law, which is that the vendor first has to make a claim of confidentiality.

If we don't agree with that claim, then we would give them notice and they would have to justify the reasons for the confidentiality.

And then ultimately we would make a decision.

Apparently SYStest is not

I mean, I see it as stone walling.

We voted on the certification without getting the actual raw test data.

What is it, now more than four weeks ago.

We still haven't been able to actually see the test data.

And I think that our regulations provide for making those test data public and I personally

>> EVELYN AQUILA: I think our lawyers have to speak to them.

I think that this is a legal matter now.

I mean, if they are claiming, if they signed something with the vendors saying that this is confidential, I mean, I don't know

what they've done, what their lawyers have done, but I think we have to have lawyers take a look at this.

I think Allison and Paul have to talk to them and find out what's happening there.

I think they should give us that information.

After all, we are paying them.

And we've signed agreements with them.

They might, you know

I really think that to say that this information on a public issue has to be kept confidential doesn't seem right.

>> DOUGLAS KELLNER: And they haven't even given it to us yet.

>> EVELYN AQUILA: I'm saying that, but they will never answer us

You are a lawyer, but I'm not a lawyer.

They can give me all sorts of answers and it seems legal, but I would like to know, did they promise the vendors confidentiality?

How far did they go with this?

>> DOUGLAS KELLNER: This is their own claim.

They are claiming that if they show us

>> EVELYN AQUILA: Why are they afraid that the vendor will sue them?

>> DOUGLAS KELLNER: Let me tell you what they are saying.

They are saying if they show us the raw test data, that will reveal their testing techniques and that their testing techniques are a proprietary and secret.

That if anybody sees how they actually do the tests, that anybody else could copy it and do the same test.

Now, my own view is that that's ridiculous.

That the whole point of testing, using the scientific method, is that you should be able to duplicate the test results.

And our regulations require that the tests be done in a public forum.

We do provide a method for protecting confidentiality when it's appropriate.

I think we need to pursue this.

I mean, I would like to pursue this.

And I don't think we should pay SYStest until they comply with their contractual obligations in this regard.

>> EVELYN AQUILA: I still think

I agree with you, but I think we have to do this in a legal manner.

I think we have to have our lawyers talk to them.

Us talking to them is not going to

I don't know if there is certain things that are proprietary.

Did they say that to us and we didn't pay attention to it?

I don't know.

If I have a certain way that I make a shoe, I may not want the whole world to know how I make that shoe because I'm the only one.

I'm not sure legally where we stand.

Are you a lawyer too, Jim?

>> JIM WALSH: Not at all.

(Chuckles.)

>> EVELYN AQUILA: I'm surrounded by lawyers.

Even in my family, I can't get away from them.

>> JIM WALSH: May I say, I find both what both of you saying is valuable to this discussion. I am agreeing with you, at the moment.

What qualification does one have to have to be a tester and qualifying for the position, what do they have to give as far as what may be proprietary information at that stage?

>> ANNA SVIZZERO: They have to be certified by the Election Assistance Commission in Washington.

Part of that certification is the submission of these tests, but they are never made public by the EAC.

The EAC will post only the master test plan and the final result, which is exactly what SYStest gave us and exactly what we did.

The only time that anyone sees their individual, what they are claiming to be proprietary test cases is in their audit.

They will be audited twice a year by EAC to make sure that they retain the certification.

Part of that audit is to review at SYStest those test cases.

So there's nothing in even that concept that is ever transparent or otherwise posted or shared publicly.

>> DOUGLAS KELLNER: You know, in the email I went through the contractual provisions.

There are about half a dozen contractual provisions that specifically require that they provide the test data to us.

And there are additional provisions in our regulations that say that the testing should be done in a public and open forum.

And you know, they signed the contract with those terms there.

But you know, I agree with Evelyn that we should have our attorneys follow up on this.

>> HELENA MOSES DONOHUE: I agree with Evelyn, too.

I have one other thing.

If we are counting on the EAC, just remember how much time we lost in getting back on the mark because of the EAC's inability to get it together and communicate to us.

I think we should remember that if we are going to depend on them.

Maybe we should take a better look at them, too.

>> DOUGLAS KELLNER: Paul?

>> PAUL COLLINS: Commissioner, as you know, the freedom of information law provides certain protects and the beauty of

that law is that if one who holds records that claims proprietary and trade secrets, et cetera, and doesn't want to disclose

them based on that, they have the burden absolutely of establishing to the Court that they are indeed proprietary and

that they would suffer substantial business detriment were they made public.

If the Commissioners wish, we certainly can bring this to a head.

Of course, a very easy way to bring it to a head would be, of course, if somebody filed a FOIL request.

>> DOUGLAS KELLNER: Paul, I don't think I need as cochair of this agency to file a FOIL request to look at their test data.

>> PAUL COLLINS: I'm just saying, when you raise the FOIL mechanism and I know you are seeking absolute

transparency in the entirety of this process, the beautiful thing is that one of the election integrity groups may very well file a FOIL request.

We as the public agency who has the records and who SYStest is holding the records on our behalf, it's a nice way to do it.

>> DOUGLAS KELLNER: Well, if they do that, that's fine.

In the meantime, the Commissioners and the board staff are entitled to have SYStest comply with their contractual obligations.

And if all the Commissioners are agreed, then we will ask the attorneys to look at the contract and the communications with

SYStest and to in effect escalate this on to a higher level to get the test data.

And try to work out a resolution with SYStest on the regimen for confidentiality.

>> TODD VALENTINE: That's true.

I mean, there was more to that telephone conversation Anna had because I was on for that as well as Stanley for part of the

conversation, as well as the people from NYSTEC and that is something that yes, SYStest did commit to have some response to the issues that you raised.

They said they would have it yesterday or something.

>> ANNA SVIZZERO: They did.

>> TODD VALENTINE: I don't see it.

NYSTEC, if something was raised that was some technical nature that we needed expertise on, NYSTEC offered to assist

with that review and make a recommendation, chime in with their two cents, so to speak.

We haven't seen that.

You know, when asking for information that really should be ours.

There's no reason to hide anything.

>> ANNA SVIZZERO: We asked for a page of the report that we would see in signing the confidentiality statement and the

same page with information redacted that they felt rose to this level of confidentiality.

They did not send those either, at least not before noon.

>> DOUGLAS KELLNER: All right.

So the Commissioners are agreed that we will pursue this.

>> EVELYN AQUILA: Yes.

>> DOUGLAS KELLNER: Thank you.

Now, the next question I had was following up on our certification of the Liberty ballot marking device, at that time

SYStest suggested that the reason the verification system did not work on the model that was being used at the Board of

Elections as opposed to the model that they were testing in Colorado was because we were using the wrong paper.

Anna, have you done anything to follow up on that?

To get the correct paper and to see if the problem is resolved?

>> ANNA SVIZZERO: I can have Bob Warren speak to that.

We have been working with Liberty to resolve that.

>> DENNIS WARD: We put a request into Liberty to supply us with the same quality paper supplied to SYStest.

They agreed to do it.

I have not seen any paper arrive yet.

The request was put in over a week ago.

>> ANNA SVIZZERO: We also asked for them to provide in writing what the paper specs were.

Those have not been provided either.

>> DOUGLAS KELLNER: All right.

I would ask that we continue to follow up on this.

Make a determination of whether or not in fact this is a problem that needs to be resolved.

Certainly we should be able to get the system that we have at the Board of Elections here to work and if it's not, you know,

I think it would be appropriate for us to revisit the certification question.

But I'm willing to give it time.

So I would ask that you follow up on that and give us a report at the next meeting.

All right.

Third item, Anna, you raised this issue of ballot programming and whether or not the State board would offer ballot

programming services for the county boards that are too small to really invest staff in the training necessary to do the ballot programming.

We have discussed this before.

Do the Commissioners want to discuss this now?

Should we ask Anna to prepare a proposal on this?

Or is it something that you feel is something that we should not explore further?



>> EVELYN AQUILA: No, I think we should explore it just to see what the cost is.

It's something we have done in the past, right, Anna?

We have helped.

>> ANNA SVIZZERO: We have helped with them building test decks.

Up until now they have been paying vendors to do that.

>> DOUGLAS KELLNER: I suggest this might be an appropriate issue to raise either at the conference or on your weekly phone calls

with the Election Commissioners Association to see how many people are interested in it.

And I see two different methods of doing this.

One is that the State board would have some facility where we would have the staff that we could do the programming and I would urge that we would do it on a fee basis.

You know, break even anyway, just to recover our costs.

Or that the counties could try to do this among themselves by sharing this on a regional basis.

And again sharing costs regionally.

If one county is the person who puts the ballot programming person on staff, then the other counties could reimburse that county for doing their programming for them.

>> EVELYN AQUILA: It might be different county to county, how many names they have on the ballot.

>> DOUGLAS KELLNER: It will be very different.

>> EVELYN AQUILA: It won't be the same automatically.

Even the number, even the number of candidates will be different.

>> DOUGLAS KELLNER: The issue here is that New York has taken what I regard as a well founded and progressive rule is that the counties cannot contract out to private vendors the job of setting up the ballots.

>> EVELYN AQUILA: It hasn't made all the counties happy?

>> DOUGLAS KELLNER: That's right, especially the smaller counties don't necessarily have the personnel or the resources to do this themselves.

And you know, most of the counties do contract out the printing of their ballots.

So this is something that is new to them that they would, that if they are going to do the setup of their electronic machines, they would have to do that themselves.

>> EVELYN AQUILA: Take queens and kings, huge!

>> DOUGLAS KELLNER: This is something that we should at least pursue.

If the other Commissioners agree, we should ask Election Ops to move forward to make a proposal on this and start consulting in a

more active way with the counties to try to get a concrete proposal together.

>> EVELYN AQUILA: Shouldn't we see if the counties want that done?

>> TODD VALENTINE: That would be part of the research.

>> EVELYN AQUILA: Yeah.

We would have to find out if they wanted us, you know, to be involved in that.

>> STANLEY ZALEN: We could bring it up at the conference call we're having.

>> EVELYN AQUILA: All right.

At our conference at the end of the month?

>> STANLEY ZALEN: Just the call we're doing on Monday.

>> EVELYN AQUILA: Okay.

>> DOUGLAS KELLNER: Okay.

All right.

Next item --

Ulster county sent us a letter asking about the use of the Emage Cast machines in this year's elections in place of the lever voting machines.

And Anna has Election Ops done anything yet to make that, to put together a plan or a proposal on how a select number of counties would be allowed to do that?

>> ANNA SVIZZERO: We could do that.

It would be based on this board authorizing that handful of counties to use a system that hadn't been completely tested.

I think if we wait for that certification to be done or almost done, we are so late into the summer that it wouldn't help those counties deploy that system.

We did speak briefly in the unit about not doing this only in the November election.

If they did deploy it, it would have to be in the primary.

We wouldn't want to see this huge change in how voters vote at a Presidential election where you have a lot of first time voters and a

lot of young voters and persons that don't participate in elections on a regular basis.

Beyond that we haven't committed anything to writing by way of a proposal on how this could happen.

We're happy to do that.

>> EVELYN AQUILA: I thought they were very optimistic in what they took to be the results.

Things would go so much faster that every, you know

I didn't see all the benefits that they believed they would get from this.

>> ANNA SVIZZERO: Well, I think a number of boards have expressed an interest in it.

I would, with all due respect to all of the county boards, I would say there are probably a handful who could step up.

They would be the boards that stepped up with respect to their own ownership.

How to get machines out to the positively places and protect them out there before the election, that had inspector coordinators capable of being deployed.

A lot of them want to participate.

They don't want two systems out there, don't want to staff it with additional employees maybe because they didn't budget for it accordingly.

I think if the board were so inclined to do this in a handful of counties in a way that would let the counties deploy them in September, we

are happy to work on a set of procedures that would enable the counties to do that.

But it is predicated on the board authorizing the use of the system absent a lot of significant testing having been concluded or even successfully concluded.

>> EVELYN AQUILA: I just thought it was overly optimistic what they saw as the conclusion of this, the benefits of it.

I just thought

I don't think the first time it will be that great.

But I leave that to the experts.

>> DOUGLAS KELLNER: Well, I have a comment and a suggestion on this.

The comment is that the Court order in the case with the Department of Justice does direct us to make efforts to make it possible to replace the lever voting machines at least in some counties this year.

So there's that mandate.

And then secondly, I think that are everyone throughout the State would benefit by having counties that are committed to doing this

now and putting the resources into doing this on a test basis to be the guinea pigs and putting together model plans that everyone else could learn from.

So that it would be a good idea to have some counties doing this this year.

And that I agree very strongly with the idea that they should not do it for the first time in the November election because in the four year

cycle, the Presidential general election is the busiest election of that cycle and that's not the time to be introducing it for the first time.

That they should, if they are going to do it in November, then they should do it in September so that they themselves have the dry run with an election with a less crushing turnout.

>> EVELYN AQUILA: They cite that as a benefit, though.

The turnouts will be good.

>> TODD VALENTINE: Part of the benefit they cite, for many counties, it's one of their smallest ballots because it doesn't have a lot of local offices.

That's one thing they like about it.

The opposite is oh, but you have a lot more people voting.

There's two sides.

>> DOUGLAS KELLNER: If they do it in September.

That's my point, if we are going to do this for September, then those counties should be planning accordingly right now.

And that therefore, we need to put together

We need to pin down who those counties are going to be and then I make a suggestion that we follow the model that Secretary Bowen did in California, that when she decertified the

(Some laughter).

>> DOUGLAS KELLNER: Many of the systems that were in use in California, she didn't say they couldn't be used but required additional backup procedures in place.

So that, for example, if the Image Cast is not certified as a scanning counting machine by September, that what we could do is allow it to

be used in the manner that the vendor proposes, but instead of our 3 percent audit we might require a more substantial audit in order to verify that the machines were accurately counting the ballots.

I don't presume to detail those procedures now, but I would propose that we ask election operations to put this proposal together and at

least contact the six counties that inform the Justice Department and us that they are prepared to do this this year to see which of

those counties are really able to do it and put together a plan for right now for making them the test counties to use the Image Cast.

>> JIM WALSH: I have a question that just came as a result of your conversation.

If someone is deciding to put a machine now a to replace the lever and something were to go wrong with that machine, can you bring the lever in for that opportunity or

>> EVELYN AQUILA: They did in Pennsylvania.

Last election, November, they said, headline in the newspaper was two of the larger counties in Pennsylvania rolled out the electronic

machines and rolled in the lever machines because electronics halfway through the election day they realized they had a problem on their hands.

So I guess we can.

>> TODD VALENTINE: Well, I mean, that is an issue.

>> EVELYN AQUILA: They have lever machines.

They don't sell them.

>> TODD VALENTINE: That's the difference.

I don't know how it is in Pennsylvania, but part of the difference here is that the lever machines, they are not State property.

So.

>> EVELYN AQUILA: County property.

>> TODD VALENTINE: They are clearly county property.

We haven't issued any guidelines for the disposition of those machines once you replaced it with another system.

>> EVELYN AQUILA: I say hold on for a couple of years.

(Chuckles.)

>> TODD VALENTINE: That becomes an issue for storing.

You store one machine and

>> EVELYN AQUILA: It does, it does.

>> DOUGLAS KELLNER: The statute now says once we do final certification, the lever machines are gone.

>> TODD VALENTINE: It's gone.

>> DOUGLAS KELLNER: I say any port in a storm.

If we have a problem

>> TODD VALENTINE: Nice to have the backup.

>> JIM WALSH: We also have to have some of those machines with the ballot printed and available to go out as a lever machine in case of a need.

>> TODD VALENTINE: As an emergency on election day?

We have provisions for emergency ballots, not necessarily a backup emergency system do we allow on election day because of the

logistics of moving a regular ABM or a shoe voting machine is a lot more complicated because of the sheer size and weight of the machine.

You can't throw it in the back of a car.

So to have that available in an emergency, hours basis, within an hour, is going to be kind of hard pressed to force a county to say you should have to spend that money just in case it stops.

>> EVELYN AQUILA: Todd, may I say something?

It says in the newspaper this morning it says New Jersey is going to court to ask a judge to let them return 10,000 machines.

I won't say the name of the vendor because it's one of our vendors, too, to take the machines back because they don't work.

They don't calculate properly.

Virginia, Virginia is getting rid of something like 5,000 machines that they purchased three years ago that they say absolutely don't work and they say they have another 10,000 that partially work.

Now, these counties didn't do any testing.

These states.

So the problem is out there. And I think by saying we should have some rule that says for the first 18 months or the first two elections

you keep at least some of your old machines because something is going to breakdown.

Something isn't going to work.

>> ANNA SVIZZERO: I agree with Todd, there are emergency ballots in the polling place.

I might print extra.

(Overlapping speakers).

>> DOUGLAS KELLNER: All right, all right, let me just ask the Commissioners.

The issue is really responding to Ulster county's letter and putting together some plan for a limited number of counties to be the test subjects using the ballot scanners as counting machines in 2009.

Do we agree that we should have Election Ops pursue this and come back to us with a proposal at the next meeting?

>> EVELYN AQUILA: Yes.

>> JIM WALSH: Yes.

>> DOUGLAS KELLNER: All right, everybody is agreed on that.

Last issue.

(Chuckles.)

>> DOUGLAS KELLNER: The question on Anna's report that I had, Anna, you mentioned having the vendors fund the certification testing escrow accounts.

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: Do you think it would be helpful to have a resolution from the Commissioners on this subject?

To give you more clout or leverage in dealing with the vendors?

Or are you satisfied that you should just pursue this without the Commissioners?

>> ANNA SVIZZERO: I think the Board's clout is always helpful.

I think it would be especially helpful in this situation because we have had instances where we asked for funds from vendors and they either were not provided or not provided in full.



>> DOUGLAS KELLNER: Specifically, what do you propose that we set as a policy?

>> ANNA SVIZZERO: Well, because some of the vendors have money in there and to varying degrees, in some cases it's what I would

consider significant, we estimated that the certification testing would cost a million dollars in the RFP, per vendor.

>> DOUGLAS KELLNER: Per vendor.

>> ANNA SVIZZERO: Per vendor is with a we estimated in the RFP.

We have some preliminary very early on estimates from SYStest that indicated the security testing alone would be in excess of \$400,000 that would be borne, shared amongst the vendors.

That's no hardware testing or anything else.

That's strictly from the security perspective.

So a million dollars is I think a real number that we could end up reaching.

If the funds were, if the escrow accounts reached the \$750,000 number now that vendors would be required to fill from that to 750.

Maybe by that time we would have a more realistic estimate from SYStest to know if it's over 750.

>> DOUGLAS KELLNER: Specifically what should the Board do now?

Do you want to think about this and we'll come back to it at the end of the meeting?

>> EVELYN AQUILA: Some of them may claim bankruptcy at this point.

>> DOUGLAS KELLNER: That's the point, Evelyn.

We don't want to be holding the bag for a vendor that may decide that

>> EVELYN AQUILA: I haven't got the money, I'm bankrupt.

>> DOUGLAS KELLNER: They don't want to handle the cost.

>> ANNA SVIZZERO: I haven't talked to Kim about it, but I can talk to Bob and Alison.

>> DOUGLAS KELLNER: If you want to do something at today's meeting, I can put it on at the end of the agenda and I ask you to

think about it, if there's something that you want the Commissioners to do.

>> ANNA SVIZZERO: I don't think we should wait until the next meeting, Commissioner because the testing is starting now.

We wouldn't be working at risk, but we have to find money to pay the SYStest bill if it

>> DOUGLAS KELLNER: I suggest that you and Kim caucus now and write out what you think the Commissioners ought to adopt as a policy today.

If you want to do it today.

>> ANNA SVIZZERO: Sure, thank you.

>> DOUGLAS KELLNER: All right.

Anything else for Anna?

All right.

**So the next report is Lee Daghlian for NVRA and public information.**

>> LEE DAGHLIAN: Thank you, Commissioner.

I have a few things here.

The conference which is just a few weeks away in Syracuse, the planning, of course, is all done.

I'm happy to say that as of Monday we had over 100 rooms already guaranteed at the hotel or not guaranteed but paperwork in from the counties.

And vendors.

So I would estimate that we would have quite a bit more than that from the counties.

When you add our rooms to it, we are going to be maybe one of the bigger conferences that we have ever had since I have been around.

The hotel I think you will all find is much better situated to handle a conference like ours.

The conference area is much easier to get around.

The vendors have their own room.

We have extra meeting rooms if we need them.

That we will keep for that two days.

We are happy with it.

I was there on Monday with Donna to make sure everybody was up to date on that and I'm happy to say that it looks like everything is going to work fine.

So I would say at this point that any staff here, if we don't have your information about who is going up, I don't think we do from you

(Chuckles.)

>> LEE DAGHLIAN: That we know that now because we have set aside a certain number of rooms for staff and for the Commissioners.

We need to put that to bed shortly.

We are hearing from a number of vendors already that they will be there.

So I think we are in pretty good shape there.

You all have, the Commissioners, I think you have your reservation packages as well.

If you get those into us and let us know when you are arriving, we will make sure that your rooms are available.

Also I wanted to mention something.

I don't think I mentioned this before, that we have a new Web site design already in the box, in the package downstairs that ITU has put together.

If I'm not mistaken, George, we're ready to go with that.

I have been trying to get a group like this together to look at it first to see that we didn't miss anything, but it's difficult to do that with all the meetings going on.

If you want to take a look quickly some day soon we can all do that around the table.

And unleash that.

It's a much more user friendly interface for the public to use and also for us to use it will be easier.

And it's more in line with what you see on other Web sites that get a lot of public use.

So we can do that this month, if everything looks okay.

>> TODD VALENTINE: On that, Lee or George, do you have an internal link to that that you can share with the unit heads and deputies so they can review that.

>> LEE DAGHLIAN: We do.

>> GEORGE STANTON: We have the hardware in place, but I'm not sure.

>> TODD VALENTINE: So they can preview it?

>> GEORGE STANTON: I'm not sure that the software is on the hard drive.

>> LEE DAGHLIAN: I had the link.

>> GEORGE STANTON: We have the hardware in place and

>> TODD VALENTINE: You'll share that so everybody can review it?

>> GEORGE STANTON: We have a Google box that indexes things.

>> TODD VALENTINE: We can preview it and that will answer your question.

>> EVELYN AQUILA: Lee, have you invited members of the Legislature?

To the conference?

>> LEE DAGHLIAN: Yes, all those communications have gone out to the vendors and to the members of the committee and the legislative leaders.

Generally we don't know who is coming from there until the very end.

>> EVELYN AQUILA: I know that.

>> LEE DAGHLIAN: Because of the session and so forth.

>> EVELYN AQUILA: It may be the Election Committee.

>> LEE DAGHLIAN: Those have been all invited.

We work on those through other channels to get them up there.

We'll do our best.

>> EVELYN AQUILA: All right, thank you.

>> LEE DAGHLIAN: The HAVA funds program that we have an ongoing program that Deirdre and Greg administer and we are making plodding progress as we have been all along here.

We have become a little bit more aggressive with them on getting, finishing their plans and actually spending money because these grants have an end life to them.

They have been informed when those dates are and that if they haven't spent this money, to go ahead and do it.

If they have spent it and we don't know about it, get in their vouchers so they can get reimbursed.

I think we are on a cusp of a lot of stuff coming in here shortly because New York City has not responded here for various reasons.

I believe their contract situation is in fairly good shape now.

And that's a big portion of this program, of course.

So we continue to work on that.

The poll worker training program with the SOE clarity is up to speed now.

We had a couple of phone meetings with the statute and with SOE staff and with the advisory committee.

We will have another one on next Wednesday.

The program is to continue those, if there is anything specific to talk about with and to review with the advisory committee and our staff that we haven't done privately, to do that every Wednesday.

When it's appropriate, to also have internet connections so we can actually see what that is.

We again have gotten more aggressive in that area because of what we felt was sort of lack of a response from SOE on certain things.

It appears that mostly they were doing things but just didn't let us know.

So through the best efforts of the team, our inside team here, we think we've got it on track now to do it the way we wanted to do it.

There appears to be no change in the end line when this program will be ready which is sometime in June of this year.

They will be here on the 15th and 16th.

14th, 15th, and 16th of April to do video of the machine systems and they are bringing some actors with them and probably use some

staff that might be available here to actually do the shoots that will be provided in the training as well as the voter outreach as to how to use all of these machines.

They will be using this room.

What else have we got here?

Oh, annual reports, I would bring up again, we are in the process of doing the 2007 annual report.

I only have one or two unit reports in.

We need everyone else to respond as soon as possible.

I would like to get this wrapped by the end of April, if possible.

Again, it will be an electronic version of the annual report.

No printing this time.

That's about it.

>> DOUGLAS KELLNER: Lee, do we have any poll site accessibility issues?

>> LEE DAGHLIAN: There's a report on the agenda later on.

We can do it now.

Greg was going to give the report, basically about the NYSILC program and I think that's basically all we have.

>> **DOUGLAS KELLNER: For information technology, George Stanton.**

>> GEORGE STANTON: How about campaign funds.

>>: Okay, George.

>> GEORGE STANTON: I don't want to go out of turn.

>> **DOUGLAS KELLNER: We'll do Liz, campaign finance.**

Elizabeth Hogan.

>> ELIZABETH HOGAN: Thanks, Commissioner.

Each board meeting I report on, I realize the same topics of projects that we have going in our unit.

Really it's because those things require continuous attention.

It's not the kind of thing that is resolved and put aside and never comes up again.

The issues that come up in campaign finance are recurring. We try to handle them in the most timely manner that we can.

So the projects that we deal with, they are probably pretty much going to be the same to a great degree.

Now, preliminarily, I would like to get to a couple of projects that I work on that are really of utmost importance.

Aside from what is really the heart and soul of campaign finance, which is intake and processing,

which is our call center which assist people in filing their reports.

One of the things that we have spent a lot of time on in the past months is the filer handbook.

Filers, potential filers are not going to go to McKinney's and read the election law and try to figure out what they have to do to file.

So we try to make it as easy as we can for them by putting the filer handbook out.

This year we've undertaken a major rewrite of the filer handbook.

It's taken a lot of time.

Staff has worked on it for several months, really I think going back to last year actually.

And it had really gotten to a position where it was ready to have Bill and myself sit down and start looking at this.

And it requires really a parsing of every word because every word in that handbook means something.

When it's used in a particular place, it may mean something different.

So it's taken a lot of time.

We really made a decision that it was worth designating that time, even though it was a lot of staff time, because we felt it was such an important project.

It goes to the very heart of what we are trying to do in campaign finance which is to get people to comply with the law to make it as

easy for them as we can to comply with the law which is, we decided to rewrite this in a way that we are doing because we really feel that it makes it more user friendly.

That's our goal.

So that's taken up a lot of our time since the last board meeting.

It goes to OGS for printing.

Has to be to them on Monday.

So our goal is to finish everything we can.

It's not going to be perfect, but do as much as we can by Friday.

I think at the end of the year our goal is to do this much earlier for the 2009 edition so we will be working on this you know at the end of this year.

The things that we just don't get to this year we'll try to incorporate at that time.

But it really, I think, is a very worthwhile project.

Bill and I discussed how much effort we felt the staff, it was appropriate to have the staff put into this.

We feel it's going to be a very good work product.

So that has been the primary focus of our attention over the past weeks.

The RFP for the process server, we received

There were 11?



11 intent to bid on the original document that was submitted by OGS.

I think the bid is due on the 22nd of April.

So that's in the works and that should be in place, I think the goal is July

Middle of July, Bill?

Is that what your recollection is?

>> WILLIAM McCANN: Our goal is for middle of July if possible.

>> ELIZABETH HOGAN: That's moving along.

For the E business, the electronic filing system we're implementing, the hardware and software have been ordered.

I got an email from George yesterday and you indicated that that stuff has been taken care of.

What we are waiting for now is the vendor, the industries for the disabled to make sure they've provided all the information and the scope of work to OGS.

And they are a preferred vendor so the process for getting their contract approved is somewhat different than the normal RFP process that we have seen in the vendor machines and things like that.

With that last step that we satisfy OGS, we should have that process underway in the next month.

So that's looking very good.

The seminar schedule is set.

They will start, I think it's the second week in May.

And go through the middle of June.

This is campaign finance staff has started doing internal preparation to go out and make the presentations to the people who can avail

themselves of the opportunity to actually go and see, you know, the presentation, ask questions about what their filing issues are.

Again, this is worth the effort because it makes our jobs easier in the long run.

It also provides the public with what they need in terms of a better filing, more complete filing, more accurate filing.

That's another issue that we feel real strongly about.

The January periodic lawsuit, the judgment was returnable I think the 13th of March.

So we are waiting the Court's determination.

We have a meeting scheduled this coming Friday with IT to take another look at the operating, is it operating system neutral?

Is that what it is, George?

Operating neutral system software that they created.

After we see what their latest state of that is, we are going to have a group from campaign finance working with George's people to actually give us the product that we need from that system.

The other projects that, you know, we have ongoing continuously and we worked on them to a degree, but obviously with the limited

number of staff and the limited number of hours to work in the day, the '06 cycle we'll still be working on that.

I understand that the filing change is also on the table.

The 06 corporate over-contribution project is being addressed.

The HAVA administrative complaint process, again I know I've explained this before, but it requires at this point a written procedure and that is a very labor intensive thing to do.

We are trying to do that to the best that we can right now.

Bill, do you have anything you want to add?

>> BILL McCANN: On the local filing issue, we did have initial discussion with Gore on the regulars.

They had some suggested modifications that we're in the process of implementing.

We originally envisioned moving forward with that in this calendar year, but because of the administrative logistics on it it was decided

that it would be overly burdensome to unleash that in this particular filing year.

Our goal is to have all the kinks worked out ideally to do it in '09.

>> DOUGLAS KELLNER: On that, I would still suggest that you get the technical revisions that you negotiated with Gore.

>> BILL McCANN: Oh, sure.

>> DOUGLAS KELLNER: You can put an effective date as a provision in the regulations, but because of the slowness of the

publication process I still think we should start publishing as soon as we can.

>> BILL McCANN: No, that is our intention.

That is our intention.

>> DOUGLAS KELLNER: Okay, good.

Anything else?

>> ELIZABETH HOGAN: No, thank you.

>> EVELYN AQUILA: Thank you.

>> DOUGLAS KELLNER: Now, George, negotiation technology.

>> GEORGE STANTON: First of all I would like to say that I had the honor last week of accepting from the Center for Digital Government a

best of New York award for the NYS voter project for the best IT collaboration among organizations.

It was a great honor to receive that.

>> EVELYN AQUILA: Congratulations!

(Applause.)

>> GEORGE STANTON: Thank you.

But since you weren't there to hear my comments I'll sort of say them again.

This was only possible because of the great collaboration we did have between organizations.

It was not just myself and Elizabeth Maurey my assistant manager, but we had two great seems in Saber and Gartner working with us

along with the cooperation of the steering committee, the executives and Commissioners made sure that I had all the resources I

needed to do the project and even more especially the county Commissioners and the county IT folks collaborated with us on this and made it possible.

So I appreciate everybody's support on this project.

And it will be down on my desk if you want to touch it.

(Laughter.)

>> EVELYN AQUILA: You should have brought it up.

>> GEORGE STANTON: It is, it's right here.

Anyway, getting on to what has been going on lately.

The database is still working very well.

We did have a glitch that some of you were aware of.

We had through an error that was made, some mismatched signatures in the database.

We found them.

Took us a little while to figure out exactly what had happened.

Then it took us a matter of a week to run programs at night when nobody was using it to straighten out all of the indexing to get the signatures back where they belonged.

>> EVELYN AQUILA: Good.

>> GEORGE STANTON: In the process of doing that or actually after we did that, we then ran reports to see where we had missing signatures in the database.

We have about 70,000 records in the database that don't have a signature attached to them for one reason or another.

We think a lot of them are from the initial load and we never got the signatures.

We will be sending out a list of the voters that are missing signatures to all the counties so they can upload the signatures.

>> EVELYN AQUILA: May I ask, they won't be denied the right to vote, will they?

>> GEORGE STANTON: No.

The only thing that the signature is used for in the statewide database is when the counties are doing their duplicate management.

They can bring up the voters in both counties and they can have the signatures that they can compare.

That's what alerted us to the problem.

VJ said he was looking at the signature of a voter he obviously wasn't looking at.

We started looking and found the problem.

But that's all fixed, we'll get the missing signatures so people can continue to do their maintenance and go on from there.

We are also preparing right now to run enrollment reports for all of the local election districts.

We have, I ran out of our database all of the election districts and gave a list to each county so they could verify that the election districts were correct.

We've given them until the end of this week to get them back to us and then we will run the election statistics to go along with those EDs.

This weekend on Saturday and Sunday

I won't be working all weekend but a couple of my staff will be doing a system health check, annual system health check on the storage,

the system area network storage on the system so we will be doing the DR site on Saturday and the production site on Sunday.

That Dell will be coming in and doing that for us.

We will be assisting them in monitoring what they are doing.

The Steering Committee has been working on getting the monitoring and auditing plan together which we do have a draft of which I hope you've all seen.

We will be continuing to work on that, starting to do some of the reports that the Steering Committee will need to look at and put a plan together of how they are actually going to do the audits.

As far as campaign finance, as Liz said we have finished a prototype of the operating system neutral software.

They've seen it once and now it's, the prototype is complete and they will be starting to meet with the campaign finance staff to look at it to see what functionality needs to be added to it, too, to meet our needs.

As Liz also mentioned the hardware and software for the imaging software is ordered and as Lee mentioned we have been working on the new Web site.

Part of the reason for the new Web site is not just because it's prettier and works nicer, it actually meets all of the accessibility

requirements for the handicapped and we came up, we found a tool, the State provided us with a tool that we can run the accessibility reports on it.

We will be able to put their seal of approval on it that it is completely accessible.

The one ironic glitch to that is, we found out that the State banner provided to us by OFT does not meet the requirements.

(Chuckles.)

>> GEORGE STANTON: They have been notified.

They are supposedly going to write some new code and get it to us.

Once we get that done, we can put that little seal on all our pages saying we're accessible.

That's it, unless you have any questions.

>> DOUGLAS KELLNER: That's great.

>> EVELYN AQUILA: Great.

I want to ask about NVRA.

Would that be to George?

One thing, I wanted to discuss the status of NVRA is.

We haven't heard much about it lately.

>> GEORGE STANTON: That would be Greg and Deirdre, right?

>> DEIRDRE HAMMER: What kind of status are you looking for?

>> EVELYN AQUILA: What is happening with it?

The status report.

Are we reaching out to people?

>> DEIRDRE HAMMER: It's kind of a bus that drives itself at this point.

What we do is, we collect the transmittal forms every day.

We enter them into the system.

>> EVELYN AQUILA: Right.

>> DEIRDRE HAMMER: I guess our greatest function with the NVRA is to go do training which happens twice a year.

Unless a county calls us and needs additional training.

But it's kind of in

>> EVELYN AQUILA: Do you do the newsletter that you send out to the counties?

>> DEIRDRE HAMMER: We do a newsletter that goes out twice a year.

>> EVELYN AQUILA: Only twice a year?

It used to be once a month.

>>: At first.

>> DEIRDRE HAMMER: I know Tim did a lot of those things.

But a lot of the things don't change month to month.

I mean, we could if that's what you would like.

>> EVELYN AQUILA: No, I'm not asking for that.

You are in charge.

You know what you need.

>> DEIRDRE HAMMER: I'm not in charge.

(Chuckles.)

>> DEIRDRE HAMMER: But I mean, we haven't

The only way things happen really with that other than the normal day to day stuff is when we get a complaint.

And we get most of the complaints obviously around an election.

But actually the last election was very quiet.

But other than that we haven't heard any complaints and we respond to everything that we get.

And the other thing we do on a weekly basis is send out materials to sites.

>> EVELYN AQUILA: Do you ever meet with the motor vehicle anymore?

We used to have meetings with motor vehicles.

>> DEIRDRE HAMMER: We don't have normal meetings.

I mean, we are in touch with them, with Shawn Henderson.

>> EVELYN AQUILA: You used to have a formal meeting

>> DEIRDRE HAMMER: Again, if you want us to

>> LEE DAGHLIAN: Let me say something.

Commissioners, the NVRA program, mostly what we do is monitor at this point.

We monitor all of the sites.

We monitor the individual locations where registrations go on.

If we find something that doesn't look right on our monthly records, we attend to that.

So it's a program that basically works by itself.

The front end of it is to do the proper training which we continue to do.



We have had some episodes of not hearing from some sites for, or not getting the proper information which we investigate each time that happens.

>> EVELYN AQUILA: We received a letter, Lee

Not to interrupt you, but we received a letter from someone who said that they filled out their, when they went for their motor vehicle

change of address or whatever, they filled out the form and they never were registered.

Neither the woman nor her husband.

And she was very upset about it.

Now, who should she appeal to?

>> LEE DAGHLIAN: Us.

We need the information to track it down.

>> EVELYN AQUILA: I'll give you the letter before I leave.

>> LEE DAGHLIAN: we get those occasionally from people.

I have to tell you most of the time through the years in our investigation, we can show that they in fact did not check the yes I want to register at DMV.

>> EVELYN AQUILA: She wrote a very intelligent letter.

>> LEE DAGHLIAN: They didn't do it for some reason.

We need to investigate each individual one.

If you get letters like that, we need to have them here.

>> EVELYN AQUILA: You're going to get it.

>> BOB BRENNAN: One of the common things we read with the DMV transactions, the statute says when you complete the transaction.

So if an applicant goes to a DMV office, and let's say they haven't paid their parking fees so they can't complete the transaction.

There's some reason in the file that they need to clean up first before they can complete the transaction.

They often think they've completed the transaction because they filled out the form.

But it doesn't really trigger the transaction until they finish it.

So sometimes I think it's a confusion, maybe it's an education issue.

>> EVELYN AQUILA: Okay.

>> BOB BRENNAN: We have seen on a few occasions where they went, filled out the piece of paper, they didn't finish their DMV activity, but they think they completed their registration activity.

The trigger for that process is yet you have to complete your transaction.

>> EVELYN AQUILA: Well, I have the letter here and I'll give it to you.

>> DEIRDRE HAMMER: One other note, Commissioner, so you know.

I know Lee said if we have problems we investigate them.

But for example if other agencies that are not DMV, other DSS, for example, or other types of agencies, we've gotten complaints about

those and I've gone out and sat with them and have sat with the Commissioners and we train the staff so that we actually get the transmittals in a timely fashion.

>> EVELYN AQUILA: Okay.

>> DEIRDRE HAMMER: That's pretty much where we're at with that.

>>: Training is scheduled in New York City for April 24 and 25.

Those training announcements will be going out next week and all the agency program coordinators also will be notified as well as all the active non DMV sites in New York City.

>> EVELYN AQUILA: Okay.

Thank you.

>> DOUGLAS KELLNER: Any other questions?

All right.

**So then we move to old business.**

Discussion of the State board petition intake review and objection process.

I guess this is sort of a revision of what had been my draft amendments to part 6204 of the regulations.

At the end of the last meeting, Todd gave me a set of procedures that he had prepared in 1997 and in 2000, which were the current procedures.

And that was the first time that I had seen them.

I had not seen those procedures before.

So I don't know that they are widely available to the bar, you know, to people who practice, which is one of the reasons for putting them in

the regulations is that then the lawyers who appear before us see what the procedures are.

But I guess I still have two issues with those procedures.

First of all, it provides for single Commissioner hearings instead of having the four Commissioners rule.

And I guess the way that I've observed this working since I have become Commissioner is that there will be a report to the

Commissioners and then the Commissioners are just asked to vote on it.

Of course, we can talk about it.

And occasionally I have raised questions and asked lawyers who were present to actually speak on the issues.

So maybe I'm already starting to break up this idea, but my view is if the four commissioners are going to be voting, then the four Commissioners ought to hear the legal issues.

And that while I agree with the analysis and the memo that it's legal for one Commissioner to hear it and then make a report to the

board, I just think it's more efficient if the lawyers address the four Commissioners.

Now, the other side it is related which is that we don't want four Commissioners doing a line by line review.

But my view is that the actual line by line petition review should be done by junior staff, not by senior management or by the Commissioners.

And that the lawyers should only bring to the attention of the Commissioners the issues where they think that the staff has made

mistakes or legal issues where they disagree with what the staff legal ruling was.

Now, this is the system that has been in place in New York City where there are ten Commissioners.

And where they have to hear several hundred of these in busy years.

And I think that that works pretty well, but certainly the idea of Commissioners sitting through a line by line hearing, I guess you all have done it.

>> EVELYN AQUILA: We have for presidents, Presidential candidates.

I'll tell you, sometimes it would be 30, 40,000 signatures.

>> DOUGLAS KELLNER: But is that the best use of your time?

Or should junior people

>> EVELYN AQUILA: No, it was the way it was done.

I'm talking 17, 18 years ago.

>> DOUGLAS KELLNER: Yeah.

>> EVELYN AQUILA: Somewhere down the line we changed that.

And it would be that staff would look at the petitions and then bring a report to the four Commissioners.

>> TODD VALENTINE: Yes, that is what we have been doing the last ten years when we switched.

We couldn't have the single Commissioners write the determinations.

We adopted the process.

>> EVELYN AQUILA: Sometimes the all four of us were doing petitions in separate rooms.

We had busy years.

(Overlapping speakers).

>> DOUGLAS KELLNER: But that process now says that you're going to have one Commissioner.

>> TODD VALENTINE: Or their designee.

>> HELENA MOSES DONOHUE: And we've done that, too.

>> TODD VALENTINE: Often commissioners do not sit for the line by line.

In most instances it's designee.

>> STANLEY ZALEN: I guess my question is

Excuse me for interrupting

What is the role of the interested parties?

Right now usually senior staff running the hearings, sometimes the Commissioner, you can go torturously through every objection by

either side, you know, the side being attacked by the objection on the other side and you can crawl through that.

So under what you've just described as your system, Commissioner, if senior staff were to find

I don't know, in a petition of 30,000, 400 apparent wrong notations by junior clerks, what about those people that were more interested parties?

Do they get to fight out all 30,000 to the Commissioners here because they haven't had their opportunity until then?

>> DOUGLAS KELLNER: Well, I'm suggesting that you do it, that we do the model that has been used in New York City now since the mid 1990s.

And that is that the clerks, junior staff rule on the specifications that if, if there are issues with those specifications that the lawyers can contact the clerks and ask them to look at it again and to revise them.

And then the lawyers would prepare a bill of exceptions for the Commissioners with very specific errors that they want the Commissioners to look at on the part of the staff.

>> STANLEY ZALEN: So junior staff is dealing with the lawyers as they try to convince them to come out with a determination on a particular line in their favor?

It's junior staff dealing with the lawyers for the candidates.

>> EVELYN AQUILA: The lawyers fight every single thing out, Stan.

>> DOUGLAS KELLNER: That's because you let them.

>> EVELYN AQUILA: Well.

>> HELENA MOSES DONOHUE: You try to stop them!

>> EVELYN AQUILA: When a man is running for the president of the United States and he has his lawyers in the room.

>> DOUGLAS KELLNER: We have ten Commissioners in the

>> EVELYN AQUILA: They don't do the president of the United States and the opposition has their lawyers there, maybe three, and they're fighting every line out, it's a long process.

I don't think junior staff is really the people up to that.

You have to have some of our lawyers sitting there.

You have to.

Because they, I mean, they'll start to bring you in things that they write up overnight.

I just wrote these four pages about that line on page 36, line three.

They fight for every single signature.

>> HELENA MOSES DONOHUE: That's when we came up with the designated person.

>> EVELYN AQUILA: Listen, I sat with that petition, I'll never forget.

And then the television is right there.

They come in.

And you have CBS and NBC and somebody else watching the process if it's important enough.

If this was say Hillary and Obama, they would all be in here watching them fight for every single signature if that was the way it was done.

So I mean, it's not a simple little process where junior staff can sit there and say that line is out, that line is in, that line is out.

These people will go nuts.

They want to see, they want to be there, they want to see why you're taking that signature out.

They want to look at that signature.

They want to look at the address, look in the register, look in the book.

It's not

You know, who knows how long I am going to be here.

I'm just saying junior staff may be sitting at the table, but you are going to need senior staff there, too.

You can't give an important candidate who considers they're the emperor and junior staff sitting around the table.

>> DOUGLAS KELLNER: Right.

Evelyn, I won't keep repeating myself, but the way we've done this in New York City

>> EVELYN AQUILA: New York doesn't have the president of the United States.

>> DOUGLAS KELLNER: I won't repeat myself if you don't want to listen to me.

It's pointless, pointless.

>> EVELYN AQUILA: I know are what you're saying, we should do it like New York City.

>> DOUGLAS KELLNER: New York City has many more decisions. New York City has lots of high charged races but by requiring the

lawyers to write out a bill of exceptions, and it's only the bill of exceptions reviewed by the Commissioners.

It can be done very quickly.

And also the commissioners in New York City basically have a procedure where they are not going to review it if it appears that no

matter what you rule on the bill of exceptions it's not going to change the outcome.

So that also saves a considerable amount of time.

My own view is that it works in the long run.

It works better for both the lawyers and the Commissioners as a more efficient use of time on the part of the public.

>> EVELYN AQUILA: I would have to think about it, to be honest with you, give it real thought.

>> DOUGLAS KELLNER: That's why I've proposed it.

I would ask that people continue to think about it.

I have given it to both the Election Committee of the State bar association and the election committee of the city bar and

>> EVELYN AQUILA: I don't think just because New York City does it it makes it the best way to do it.

>> DOUGLAS KELLNER: Obviously not, Evelyn.

(Laughter.)

>>: Could I suggest, I think part of

There isn't anything wrong with staff doing line by line reviews.

You're either registered or not, enrolled in the party or not.

One of the biggest problems has been the codes that we use and if you don't use ours, the candidate can use their own and define them.

With all respect to Ms. O'Keefe and Mr. B who have been at the table with us, they have 15 ways of tell us that they don't think that somebody is registered.

If we clearly define how a signature will be determined by staff and if you have a key and candidates can't come up with their own, line by line can be absorbed by staff in that way.

If lawyers in the room want to take exception to the finding of the staff, there can be another column on the sheet for that exception by the lawyers.

The attorneys on the staff can make that overall report in addition to the summary report to the Commissioners, as Commissioner Kellner explained.



I think that's the biggest problem we have had.

We have had people in the same room looking at specs and interpreting them separate ways which compromises the

Commissioners, all four of you have been at the table and can't figure out why the petition you just heard ten minutes ago was held

one way and another expect on another petition has been held in another.

I think if we can clearly define what our key, our abbreviations stand for, that's a big step toward making that work.

It's a better use of everybody's time, I think.

>> DOUGLAS KELLNER: Who is going to write that up, Anna?

>> ANNA SVIZZERO: Pardon me?

>> DOUGLAS KELLNER: Who is going to write that up so that that idea turns into procedure.

>> EVELYN AQUILA: Our lawyers.

>> ANNA SVIZZERO: I'm happy to take that on.

Todd and I started a standard board key that candidates would be required to use.

That was working fine.

That's working on the definitions.

We didn't get many buyers.

But I can dig it back out again.

>> DOUGLAS KELLNER: Again, you know that the New York City regulations actually have a set of abbreviations.

>> ANNA SVIZZERO: We can get those and see if they work.

>> DOUGLAS KELLNER: They are not binding.

The New York City abbreviations, you are asked to use those abbreviations, but the lawyers are free to use their own abbreviations if they wish.

But they then have to define them.

>> STANLEY ZALEN: Commissioners, I couldn't agree more with Anna.

It would be a huge help if they were required to use ours.

>> EVELYN AQUILA: Right.

>> STANLEY ZALEN: I agree about that.

I have one more question for you.

Once a lawyer puts out his bill or chart of exceptions, does the lawyer or candidate, whoever has those exceptions, also have the right to address the full board of ten?

>> DOUGLAS KELLNER: Yes.

>> STANLEY ZALEN: At length?

Is there time limitations?

>> DOUGLAS KELLNER: There are no time limitations.

It's really what the Commissioners will tolerate.

But typically it would be anywhere from five minutes to half an hour, depending on the gravity of the issue.

>> STANLEY ZALEN: And you say that the Commissioners go through sometimes hundreds of these in an election year?

>> DOUGLAS KELLNER: Yes.

And, but the number of times where the Commissioners actually do a line by line review is probably under 10 percent.

You know, where the commissioners are actually looking at petition signatures.

Because the issues that the lawyers raise are generally legal issues where it's not necessary to actually look at the petition.

And that's been our experience, right, in the last two years.

I think we've only looked at the actual petition once that I can recall.

But we have had legal issues, legal arguments.

And maybe it's because of my own interest in the issue and my own feeling of due process that if I'm going to vote on a matter, then I

think that in fairness the lawyers who are interested in it should be allowed to address us.

And you know, we have had that.

And I don't think that's gone on very long.

Usually it's five or ten minutes.

And let them frame the legal issues.

But I just am concerned that senior staff at the board should not be tied up in doing the line by line review of the petitions.

That should be done by junior people who just lay it all out and then if the lawyers don't like those rulings and can identify errors on them,

then they should call those errors to the attention of the staff of the Commissioners.

>> STANLEY ZALEN: Well, particularly in, with the idea of using junior people, as good as Anna's suggestion is, it's even better than

so that they don't have to understand foreign keys and abbreviations if they have not been familiar with them before.

>> DOUGLAS KELLNER: Well.

I mean, Anna's plate is already so full

>> ANNA SVIZZERO: No, I believe I will draft the thing but I'll dig up the notes from when we worked on it before and I'll give them to Paul and Allison and they can take the lead on that.

We did some work and I can dig that out of my files and pass it along.

>> EVELYN AQUILA: Good, good.

>> DOUGLAS KELLNER: All right.

Well

>> EVELYN AQUILA: We certainly could streamline, you know, the way we do it.

There's nothing wrong with that.

But I don't, you know

I think some of the things we did with it was done right.

>> JIM WALSH: I was here ten years ago when we put this system into effect, Evelyn, when Helena was.

My memory is it passed four to nothing.

We had a lot of discussion and debate back and forth and felt what we were doing is making this operation a lot more efficient than it

was at the time and responding to the requirements that were put to us.

Now, admittedly that's ten years ago.

I think the discussion here is very helpful to maybe perhaps change.

If it's necessary, if it's legal, if it makes things more efficient and fair, I don't see anything wrong with that.

But I think we would need the advice of staff, the legal staff here to put together something, bring it to us, let us review it, chew it over, discuss it, debate it.

Maybe we stay the way we were and maybe we improve on it.

When we finish, New York City can say this is the way we do it in Albany, why don't we do it ...

(Laughter.)

>> EVELYN AQUILA: Good for you.

>> TODD VALENTINE : I think at this point what I would suggest is really have, since this, you know, the petition process is something

that really Allison and Paul aren't particularly familiar with, having been here for a limited time period is having Anna and Elections Ops

with Kim educate them on what the process is, taking the current procedure that we have, the policy and work with Allison and Paul to try to craft something, to work on it.

It has been ten years.

It's certainly worth a look at.

>> DOUGLAS KELLNER: I would suggest that the lawyers who routinely appear in front of us be consulted on that.

I mean, not that they should dictate.

>> TODD VALENTINE: If they were part of the process the last time.

>> DOUGLAS KELLNER: I'm not faulting the process.

I'm just saying that there may be a more efficient way to do it.

>> TODD VALENTINE: No question about it.

It should be reviewed.

I've said that.

It's time.

>> DOUGLAS KELLNER: All right.

Well, I think that's enough on that for now then.

**New business.**

Let's do A and B together.

I mean, A was just the voting machine report.

All I wanted was to have it in the Commissioners' packet so that the Commissioner would have a opportunity to read it.

I see that Brad Williams is here.

If he wants to say anything about it, that's fine.

Then the polling place accessibility report?

Was Greg going to do that?

>> GREG: Yes, sir.

>> DOUGLAS KELLNER: Okay.

>> GREG: Good afternoon, Commissioners.

Just a recap.

We collaborated with NYSILC on any

>> DOUGLAS KELLNER: Why don't you stand up since you're so far in the back.

Better.

>> GREG: We've collaborated with NYSILC on accessibility issues that they brought to us from last election day.

We've wrapped that up.

We have been in contact with the 17 county boards and two of New York City's boroughs regarding 50 poll sites that had 101 accessibility issues among them.

Three of those sites have been closed.

One each in Niagara, Suffolk and Westchester counties.

28 were in improved.

Six sites were found to be, complaints were found to be unfounded and two we had insufficient location information.

One in each of Orange and Westchester counties.

And 15 of these sites are in Erie County which we are still awaiting their surnames

End of April?

We intend, plan to have those by the end of April.

We have been assured by the Erie County board that those are on their way.

Anybody have any questions?

I can take them.

>> DOUGLAS KELLNER: That's great.

Brad, did you want to say anything about either of the two reports?

>> BRAD: First on the voting machine report, you know, it's something that we had been talking about for a long time.

You know, the ballot marking devices are, you know, for people with disabilities and we felt that it was very important that people with disabilities tested the devices.

You know, we put it out there.

And I think maybe it was just a matter of timing before we finally got the devices to a point where they were identified and then we were able to then link up with the vendors.

The vendors were all very good.

I have to say even though it was a matter of meeting up with one and another coming along and the next one coming along, it all kind of fell in line.

They were all very respectful, all excellent with the folks that we put forward.

But I think it went well and I think what was great about this report is, this isn't like an opinion of, you know, these devices.

You have over 30 different people, most of the people with disabilities testing these devices.

We didn't like say that this is device number, rated number one or two or three.

Or this device is in and this device is out.

You know, the premise is that hey, these are devices that were accepted and what we are doing here is objectively testing them with

over, in this case 30 different mostly people with disabilities and we are putting them through their paces and we want to give an idea

first on some of the objective measures of the preferences and try to give an idea of where they stand by people with disabilities and then

subjectively kind of give the vendors and people an idea of how they might be able to make some improvements, especially for areas

where they can make some quick improvements before they get rolled out.

You know, if they make some quick changes so that they get maybe a bug, you know, encounter some problems before they get out there and before they get out to the polls.

And we've maybe made it easier for people when they go out and vote, then I think we've accomplished quite a bit.

That's really what we have been trying to do when we suggested this all along.

And I think if you read the report you can see from some of the suggestions people do look at this seriously.

I think the vendors took it seriously along with the testers.

So we were really pleased and we thought it was very productive and what we are looking to do, the Assembly is having a disability

awareness day on May 19 and what we are looking to coordinate is that the different folks, four different vendors who have been selected

by counties to provide ballot marking devices in New York State, hopefully they will be at this event May 19 in the well and hopefully

those who were able to make some improvements like we see suggested in this report will have done so and there will be people

with disabilities from throughout New York State there and we will have the form that you see there and we will be there encouraging

people to retest these machines because anything we can do to not only improve them but then to reeducate more people on how to use

them so that they can, you know, have better chance on primary and election date 2008, we feel is going to be a benefit.

But that's what our aim was and we think we were successful.

So any questions?

On the report?

>> EVELYN AQUILA: Thank you very much.

The planning that you were doing all along.

>> BRAD: We really were looking forward to it.

>> EVELYN AQUILA: Greatly appreciated.

>> BRAD: Thank you.



The polling place access, we really appreciate the effort that the unit has put in and I think it's worked out very well.

And you know, if you are going to have one ballot marking device polling place, the polling places have to be accessible, too.

We will continue to work with this unit as well to make those polling places accessible and we look forward to working with them.

>> EVELYN AQUILA: Just realizing that we need more handicapped parking spaces.

That's something that sometimes you don't even think of.

If you don't need a handicapped parking space.

So I can see that it's, there are a lot of things that you are not even thinking of.

And we thank you, you and everyone else who brings these to our attention.

>> DOUGLAS KELLNER: So Lee, I think you deserve an attaboy for turning around this issue because I don't think a year ago Brad would have gotten up and said that.

(Laughter.)

>> DOUGLAS KELLNER: So congratulations to you and your staff.

>> LEE DAGHLIAN: Thank you.

Most of that goes to the staff.

>> DOUGLAS KELLNER: Well, okay.

We see that you made progress on an issue that had been areal thorn over time and that's great that you are able to make that progress.

All right.

Next on the agenda is Pat Tracy on the budget report.

>> PAT TRACEY: As of today you have 3.3 million left in the fund for state operations.

That was the 20 million appropriations.

For the state certification fund you have 3.1 million remaining right now.

And I know you are interested in seeing what fed funds you had left.

>> DOUGLAS KELLNER: Certification is covering the cost of SYStest and NYSTEC that is not borne by the vendors?

>> PAT TRACEY: Yes.

>> DOUGLAS KELLNER: And does it appear that 3.1 million will be adequate to cover that through the completion of the testing?

>> PAT TRACEY: From what I know, it should be adequate, yes.

>> DOUGLAS KELLNER: And then the remaining HAVA funds can be used for

I mean, what is the plan for using the remaining \$3 million of HAVA funds?

>>: Testing, it's the continuation of the NYSTEC contract, the 7 million.

Right now when you approve 312,000 for personal service for acceptance testing for the first round because of these additional

temporary services, there will be travel expenses for her staff for acceptance testing and to assist the counties and any training programs she was developing for that, out of that fund.

>> DOUGLAS KELLNER: Is that 3 million ear marked for a particular plan?

Now, you gave the list of some items.

Does that add up to 3 million?

Are there ear marks?

>> PAT TRACEY: No, it is not.

I don't have the final exceptions testing plan amendment.

I think you are upgrading that right now, but the 1.7 million in the, and the 3.12 will remain 1.3 million after you approve those if you approve them.

>> DOUGLAS KELLNER: Is there any basis for asking the legislature for additional funds for either of those purposes at this point?

>> PAT TRACEY: Sure.

I would definitely say it would not be unreasonable to ask for additional funds for the state operations part of it because I imagine

the acceptance testing for the next round will be costly and you have like the NYSTEC contract is going to eat a lot of that fund up.

>>: Well, but the current projections you said still account for that?

The NYSTEC takes that into account?

>> PAT TRACEY: I took that into account but you have another round of acceptance testing and assistance to the counties and travel throughout the State.

And additional temporary staff that you are going to need for acceptance testing later on.

>> TODD VALENTINE: Well, I mean part of that is, and this sometime hasn't been addressed for plan B is, New York City has asked to have their acceptance testing

Because they are not going to deliver plan B until July.

Could we move it down there and utilize their personnel?

That would be a savings here.

But that hasn't been responded to here by the staff.

As a cost savings measure.

This is what New York City wanted, only because they are really getting their delivery

>> DOUGLAS KELLNER: Todd, you know this is what I wanted.

I have been proposing this for a long time.

Kathleen O'Keefe had a discussion with Peter Kosinski prior to Mr. Cedarquest's request where Peter said this is a nonstarter.

I still think that it could be more, done more efficiently at the county level than at the State level.

But it does require legislative change.

>> TODD VALENTINE: Well, it's not a state versus county issue, is what I'm talking about.

It's really a location.

Because of New York City, because of A, their late delivery.

It's not late, but it is not early.

It's toward, it's in July.

And as New York City explained, they have their own acceptance testing process.

This comes from their voting system, I don't know what the title is, but

Chief voting technician John O'Grady, they had their own process which if they could dovetail it with our process, we would go down and they would be working under our auspices.

It would be our testing but at their location in order to A, saving paying our temporary workers.

They would pay their workers out of their budget and it would save them the time of the shipping.

Doing that for the rest of the State would be problematic because not every county is in a position that has that personnel that we could dovetail on to.

At the county's expense.

>> EVELYN AQUILA: Yeah.

>> TODD VALENTINE: And versus the cost of our personnel traveling throughout the State makes it a bit more problematic.

New York City does have such a large delivery occurring at that late date.

It's at their request, carving that exception out.

The staff to be honest with you has been resistant to that idea.

I raised that here.

It has been resisted.

>> DOUGLAS KELLNER: For good reason.

I mean, the resistance comes for several reasons, in my understanding.

Part of it is when we initially proposed to the city that it be done that way, which happened a year and a half ago, the city reacted bitterly at that proposal.

And Steve Richmond even threatened to sue us.

>> TODD VALENTINE: They were saying, their leadership is saying something different now.

>> DOUGLAS KELLNER: Their leadership has changed.

This comes in at the 11th hour, after plans and proposals have already been drawn up.

>> TODD VALENTINE: I don't think it comes until the 11th hour.

Their schedule is not scheduled for delivery until July.

We have fortunately been able to use the early delivery of New York City's 50 testing machines as a shake down you know cruise for the

testing process itself, but since this is not occurring until July, I think this is the time to have that discussion now.

>> EVELYN AQUILA: Will they pick up any of our expenses if we send people down?

>> TODD VALENTINE: We have the expenses for our personnel.

What we wouldn't have is the expenses for the temporary workers, which we are budgeting for 100,000.

>> EVELYN AQUILA: We save money in one way.

>> TODD VALENTINE: Yes.

Not for facilities, because we're getting them for free, but it saves the county because it bears the cost of the reshipping twice.

You have to reship it to New York City.

>> EVELYN AQUILA: It makes sense to do the testing in New York City.

>> TODD VALENTINE: Because of the large number of the delivery, we can

(Overlapping speakers).

>> EVELYN AQUILA: If the other counties wanted this, we can say they got their shipment late and it was a huge shipment and that's why we did this, why we jumped in and helped them.

I think it makes sense.

I really do.

>> DOUGLAS KELLNER: Anna?

>> ANNA SVIZZERO: I would respectfully disagree.

I think because of the vehement proposal in this agency and at the city board against doing this proposal, we spent a lot of time crafting a process

that puts the responsibility at our door where it reside pursuant to the statute.

I think we have tried to level the playing field with all of the counties.

The voting machine, the ballot marking device deliveries for that particular vendor will be happening in mid June through the end of

July, but all of the other voting systems will continue to come in here incrementally.

So the ability to send a team of people out of here at the same time that we have equipment coming in from other vendors doesn't make much sense.

I think the city board admittedly doesn't have the space to do this.

We've invited the city board up here to participate in the acceptance testing process.

I had an extensive conversation with the city board last week on this topic.

Reminded them of their reticence.

I did not hear anyone repeal that reticence on the phone in my conversation with them.

There are other counties that want to do this at the local level, especially the Long Island counties.

Some of the systems are being built on Long Island.

It doesn't make sense to hike them up the through way to Albany and right back down again, but because of our responsibility and how

seriously we are taking it and the work that has been put into crafting an acceptance test process that isn't any different in New York than

in Chemung or anywhere else, needs to happen in that environment so we can continue to work at optimum level here and still be fair to every county.

Everyone wants to save the cost of delivering those machines to them.

There just isn't a practical way to do it.

I think we've built a program that work centrally.

We explained to the county boards it was going to happen centrally.

And did not get that kind of push back at the time it was explained to them.

Didn't get any kind of reticence here in the building.

As a matter of fact, we pretty much took a stand that if this is what is good for us, it's about time to stand up and tell them what's good for us.

They are the county board and they are we are the State board.

Nobody used that language to the counties, but the process is important, the responsibility that we have for this is important and I

wouldn't want to mingle our acceptance test procedure with whatever the city wants to do.

If they want to do some sort of delivery process at the end, they are welcome to it.

Every county is.

Knowing John O'Grady, he want to reconstruct the certification schedule for the delivery.

John is very, very precise.

That's why we asked him to serve on selecting an ITA and a number of other committees.

He is a very detail oriented person, but I don't think that would be fair to our process and I just don't agree with that perception of how this would work.

>> EVELYN AQUILA: Well, there also is the other side of this which we've got these counties sort of angry with us.

The legislation agrees with us, but that could always be changed.

But I think they might say, you know, the State board doesn't bend on anything.

Here we are, we have a tight situation.

We don't want to cooperate.

I feel that could happen.

Am I wrong?

Maybe Nassau and Suffolk and New York City?

>> DOUGLAS KELLNER: They can complain.

As I say, when we proposed to do it now the way New York City is now proposing to do it, which I proposed a year and a half ago, New York City reacted bitterly to that.

>> EVELYN AQUILA: I know.

I remember.

>> DOUGLAS KELLNER: And Peter Kosinski immediately said no, it's a nonstarter and terminated all discussions along that line and had us draft the plan that Anna has now.

So I'm sort of in the middle of this.

Originally I thought that it would make more sense and be a better expenditure of funds to do it that way.

Frankly, well

That's enough said on that.

But.

>> BOB BREHM: It would be better early on to get that indication.

The plan we had was to have a training program to train the counties how to do this job.

Now we came back full circle to a tent worker and our staff supervising.

Our staff now knows what to do and we have to get in place how to get the counties trained.

We've abandoned that concept awhile ago.



We have to jump back in to put that planning in place if we have to.

And the earlier we know to do that, the better.

>> TODD VALENTINE: I think we only disagree on the extent there was a plan on the county wide acceptance plan.

There was never a detailed plan presented to the board.

>> DOUGLAS KELLNER: Because you rejected the concept, Todd.

When I say you, it was you and the city board.

>> TODD VALENTINE: Many counties did as well.

>> EVELYN AQUILA: Yes.

>> TODD: It didn't make sense to go forward if the counties

>> ANNA SVIZZERO: It was discussed at the board level and it was rejected because of staff recommendations that they made to their respective Commissioners.

That's one of the first projects that Allison and Bob worked together on and NYSTEC frankly when they came on board because they put that detailed plan together.

I disagree there, it was never bought into here.

It was explained at the board meeting and it was turned down at the board level.

That's my recollection.

>> STANLEY ZALEN: Todd, what would you say about this issue that we say yes to New York City, Nassau and Suffolk say well, come down here and we'll do it according to our procedure here.

And then maybe if Nassau and Suffolk says come down here, maybe Erie and Monroe switch tacks and say come up here.

>> TODD VALENTINE: I don't think all boards are created equal.

When you have a board the size of New York City, you have to treat it differently.

It does have an amount of resources that others don't have, to provide the assistance that we don't have, instead of hiring our own help.

There's a distinction there to be drawn that has not been drawn.

When they resist that, that does kind of kill the plan.

Now to the extent that they are coming around, time may be pushing us and our own budget process pushes us to consider ways that in the past we rejected for other reasons.

All I'm saying is at least there needs to be an open, at least meeting with New York City on that.

I'm glad to see that's been started because there had been resistance to even doing that at this point from the staff.

They just were rejecting it off of hand and "no" was all the answer I was getting.

New York City can ask.

If the answer is ultimately no, I'm sure they'll accept it and deal with the issue, but it could come down to a time factor depending on

when the size of that delivery comes in and whether or not we can get it through.

Our initial testing for those machines has taken us certainly in the shake down cruise has taken us longer than anticipated.

>> ANNA SVIZZERO: I disagree, that's not true.

>> EVELYN AQUILA: Anna sold me, I was 100 percent we should go to New York City and do this rather than have the huge delivery up here and go back down.

But when Anna says how does she split the staff?

So we have machines come up here at the same time as we're going down there.

How do we have enough people to service everybody?

You know, there are so many problems here.

Yes, in a way we should go to the big counties and help them out.

Yes, but what do we do about all the other machines coming in?

Who does the job?

You know?

I'm just

It's a dilemma, no two ways around it.

>> ANNA SVIZZERO: I think the counties are created equal.

The legislature crafted that New York City should not be dealt with.

The lift in New York City is as big as it is in Hamilton for the same reason.

They have the limited resources, the resources to do the job it takes in their jurisdiction.

The acceptance testing, unfortunately while trying to encourage New York City to participate at this level, John O'Grady showed up at the door almost at the same moment we did.

John O'Grady reported to the city board that acceptance testing per unit was taking a long time.

I explained to Mr. O'Grady before he came and I explained to the New York City Executive staff when I spoke to them on the phone that

that was attributable solely to the fact that we were using an opportunity to check our procedures out and as each machine

came in, it had to be accounted for in a way that fit into that procedure.

The voting machines that were acceptance tested on the first day and I can certainly have Bob Warren speak to this.

He said six were done.

The second day there were 17 or 18 and the third day there were over 20.

The acceptance testing dry run that was done with NYSTEC and our team with Bob Warren reading it was 15 minutes a unit which is what ended up being on Thursday and Friday.

The dry runtime was exactly what we expected it to be.

So I would disagree with that aspect of that discussion.

>> BOB BRENNAN: I think one of the issues driving the city is the delivery schedule that the vendor is able to meet because you know, it's a little bit

It almost, the period of time that we were looking at, it's about cut it in half.

So I don't think it's a matter of it's taking longer per machine.

It's just that we have shorter time to get the machines done.

So an hour and 15 minutes per machine at 18 machines over a short period of time, we need to dedicate more staff somewhere in

the process to meet our time obligations with the Federal Court and get these ready.

I think that's driving our problem, whether we do it in New York City or up here.

It's when will the vendor deliver the first order.

I believe we are getting two tractor trailers a week over I think it's a five or six week period rather than over a smaller number over a

three month period, but the city has five delivery points.

One to each borough.

If we have to provide supervisory staff, unless they change their delivery point and I'm understanding they have space problems at

their offices now, we have to know where we can logistically set up, who we have to send from a supervisory staff, how often,

and if they are down there, they are not here.

And in July that's not the only responsibility that election operations has.

We have a few petitions also, this being

Now, granted, this group is either on agency 3 New York City and we have to keep an eye on where everybody is going.

So the problem with this is the lateness, you know, the rejection of an earlier plan when we had more time to map it out.

You know, it's going to be harder for us to be in six locations over that period of time plus do our other obligations.

>> EVELYN AQUILA: Bob, may I ask a quick question and then ask you another question on this?

Is there any chance we can train their people to do this?

We wouldn't have to be involved?

>> BOB BREHM: That was our original responsibility.

>> ANNA SVIZZERO: It's our responsibility.

I don't know how we do it.

>> EVELYN AQUILA: Would we fulfill our responsibility by training them?

>> DOUGLAS KELLNER: Kathleen?

>> KATHY: If I could address this for a minute?

In 2005 the Senate and Assembly agreed that the State board was going to be responsible for the acceptance testing.

Putting aside all the practical issues here that are real, I reached out to Peter when he came over to the Senate with the idea that perhaps we had more flexibility if the Senate would agree to do something.

And Doug and I talked about that previously.

I suggested the possibility of doing very small statutory change to allow the locals to do it.

And Peter just reject the it out right.

On behalf of the Senate.

So my understanding is that the Senate is still interested in the State board being responsible for that.

And there is no authority in the statute to carve out an exception, as Todd has suggested.

I'm not saying that's not a good practical idea.

>> TODD VALENTINE: I disagree.

This is not carving out an exception.

We would still be doing the exception testing.

>> KATHY: I beg to differ.

You described it as carving out an exception.

And I'm responding to that.

The statute doesn't allow an exception for New York.

>> TODD VALENTINE: Carving out the exception is the actual location of the testing instead of Albany.

>> KATHY: Whatever the semantics.

>> TODD VALENTINE: Not semantics.

It's a key difference.

>> KATHY: I tried to get Peter to see if the Senate would agree and he was not receptive.

I'm not sure where the authority comes from to give New York

>> TODD VALENTINE: We are not giving anything.

We are moving the location.

This isn't changing the statute.

This is actually using the statute, but changing the location for practical reasons.

>> ANNA SVIZZERO: You're not just using the location.

You are using 70 of their staff people in July who will be needed to do our work.

>> TODD VALENTINE: We're hiring temps, too.

>> ANNA SVIZZERO: That's the process we created based on the direction we were given by this board.

I don't know that at this late date it makes sense to unlevel the playing field to that degree and not be inclined to be able to offer that

same level of just moving the location for the other boards that have requested it.

>> EVELYN AQUILA: I don't see this conversation going anywhere.

>> HELENA MOSES DONOHUE: I agree.

>> DOUGLAS KELLNER: Okay.

So the next item

Were there any other questions about budget?

>> EVELYN AQUILA: Oh, I do have a question.

Pat, the budget has grown and grown over the last few years with the Federal money, and then, of course,

the responsibilities have gotten bigger and bigger by more people being employed.

I wonder, Pat, do you have an accountant on staff?

>> PAT TRACEY: No.

>> EVELYN AQUILA: No?

Would that help?

If we had an accountant, I think either from OGS who gave you a hand looking this over or being allowed to hire one, whichever would be the right way to go for you

>> PAT TRACEY: OGS probably would provide the services.

They have a budget analyst that I confer with and tell them, you know, what funds we want set up.

I did a budget certifications, but they set up the cost centers before paying the bills and

>> EVELYN AQUILA: They don't come in and help you prepare the budget that we send over.

>> PAT TRACEY: No, they don't come in.

>> EVELYN AQUILA: I think that would be a help.

I think it's a big big job and a very complicated budget.

I shared it with someone who is a certified public accountant and they thought that there were ways that it could be made smaller and have more clarity.

And but you would have to know their mind set, you know.

I don't think like an account tan any more than I think like a lawyer.

But if you had that assistance it would make it better for the board and better for you.

>> PAT TRACEY: The budget is set up in a format that the budget has to be put in.

They sent us the spread sheet that I fill in the numbers in the certain areas and then it reads into others.

>> EVELYN AQUILA: And you give it to OGS?

>> PAT TRACEY: No, that goes to the division of budget and they review it.

That's our request.

It goes in and they work with us, but it's set up on the format that budget sets up.

I don't set up that format.

That's something that comes from budget.

That's the format they wanted and then they, from there they do their agency budget presentation, their proposed budget.

It goes into the appropriation bills with the legislature.

>> EVELYN AQUILA: Yeah.

I just think that having an accountant either on staff or working with you would be a good idea.

>> PAT TRACEY: I do speak with the OGS budget people and I can speak to them about assistance.

>> EVELYN AQUILA: I think someone you worked with, just not that they send somebody over once in awhile.

So the exact same person whom you can have a relationship with.

>> PAT TRACEY: I do have a relationship with one person in particular who, you know, I advise him where we want our funds to be, you know, we set the

I do the certifications and I send him that information and from there he sets it up under financial management system.

So we use the financial management system to some extent and he does provide, you know, what I ask him to do something,



that he does get that for me and he does review our budget request.

>> EVELYN AQUILA: See, the reason for my concern is I know that money is getting tighter and tighter and tighter.

I don't want these getting cut.

Another thing that accountants know sometimes is how to present things in a little better way to get us a little extra money.

And so that's the only reason.

You do a wonderful job, Pat.

I'm not saying, I'm just thinking if you had that extra hand it would be a help, that's all.

It's a huge budget now.

Not like it used to be in the old days.

>> PAT TRACEY: The budget has said, stated it was going to be very tight this year and they have not encouraged any extra funding.

We have asked twice and it's been no positive results have come out of it at all.

At this point.

>> DOUGLAS KELLNER: Any other questions on the budget?

All right.

We will move to item D, the resolution on SYStest funding by Election Operations.

>> ANNA SVIZZERO: Donna indicated these might not have made it into your packet.

It's on the agenda.

So Terry has extra copies.

>> DOUGLAS KELLNER: I think it's under tab 5.

>> STANLEY ZALEN: I think the Commissioners do have it.

>> ANNA SVIZZERO: Terry can distribute this.

I'll hand it to Terry to distribute it.

>> EVELYN AQUILA: 150,000, yeah, it's here.

The memorandum from March 20.

>> DOUGLAS KELLNER: Tab 5.

>> EVELYN AQUILA: Asking for 150,000.

>>: Request for additional funding for generic certification

>> DOUGLAS KELLNER: I'll read the resolution.

>> TODD VALENTINE: One question before you read the resolution.

The resolution, the second whereas clause on the bottom has prepared a memorandum as attached here to.

I don't have any of that attachment.

>> ANNA SVIZZERO: This is the memorandum.

The discussion was at our status meeting.

>> DOUGLAS KELLNER: Are we looking at the same one?

>> TODD VALENTINE: That's what I'm wondering.

>> EVELYN AQUILA: The next page.

>> DOUGLAS KELLNER: Resolution to approve additional funding for generic system certification costs incurred by independent authority tasks.

>> TODD VALENTINE: The third whereas clause from the top?

>> EVELYN AQUILA: First whereas?

>> DOUGLAS KELLNER: That should be deleted, right?

>> TODD VALENTINE: Well, that memo that is attached does not detail the anticipated costs.

>> DOUGLAS KELLNER: No.

>> TODD VALENTINE: If that's what they intended to do.

There is no other memo detailing it.

>> DOUGLAS KELLNER: That paragraph should be deleted?

>> BOB BREHM: What that means, these are the types of expenses in the memo, which is stapled to the resolution.

I guess maybe

>> TODD VALENTINE: The cover memo?

Detailed memo?

>> BOB BREHM: The pages dated March 20.

>> TODD VALENTINE: All right.

>> LEE DAGHLIAN: List the kind of expenses.

I guess maybe it's better than detailed?

>> EVELYN AQUILA: Then there are attachments.

>> LEE DAGHLIAN: The types of expenses that would be covered by the generic testing effort.

>> TODD VALENTINE: It's unclear from the whereas clause what it is referring to.

>> EVELYN AQUILA: Then there's the attachments.

>> LEE DAGHLIAN: It might have been easier to put it in that whereas.

Do you want to do that as an amendment?

Take that list and put it as that whereas?

Maybe?

>> BOB BREHM: I have.

>> DOUGLAS KELLNER: I have no problem with this as drafted.

>> TODD VALENTINE: The expenditure itself is explaining the anticipated cost.

>> DOUGLAS KELLNER: You want to mark it up?

>> TODD VALENTINE: It doesn't really matter.

It's just unclear from that.

If they're saying the first cover memo is the attached memo, normally you put the attachment at the back with the explanation of this cost,

this for that, because otherwise it's just \$150,000 for a lot of different stuff.

>> EVELYN AQUILA: Yeah.

>> TODD VALENTINE: Without actually explaining what goes to what.

If it's necessary to have that flexibility, then it should be left as it is.

But if there are actual anticipate the specific costs, it does go to different things.

>> EVELYN AQUILA: I can't answer that.

>> ANNA SVIZZERO: There needs to be that flexibility.

We don't know the costs until they are actually into the work.

The reviewing back and forth with NYSTEC, the additional requirements required.

I don't know what waiving the fee for the review of the open source is going to be until we actually get billed for it.

(Overlapping speakers).

>> DOUGLAS KELLNER: In order to waive the fee for open source, our resolution required that proposals had to come to the Commissioners first.

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: So right now, the budget for waiving fees for open source is zero.

>> TODD VALENTINE: That does anticipate somebody coming forward.

>> DOUGLAS KELLNER: Could be possible because Dominion indicated they would do that.

>> BOB BREHM: That is trying to identify in the 5 million, whatever portion is left of the 5 million for testing that we are setting aside this

150,000 to complete the state master test plan portion, whatever, other kind of things and in case we get one, there's some money set aside.

We may have to come back to you.

We may never spend this money, but we wanted to at least set some aside, especially before the legislature finished their time in

office here on the budget and we at least put some money aside because we haven't anticipated that we will have to do something.

>> DOUGLAS KELLNER: I'm fine.

>> TODD VALENTINE: If that's the explanation, that's fine.

>> EVELYN AQUILA: We are going to go through all these at once or one at a time?

>> DOUGLAS KELLNER: On the resolution to approve additional funding for generic voting system certification costs

incurred by independent testing authority tasks.

We are voting on the resolution as included in our packets without any amendments or revisions.

>> EVELYN AQUILA: Okay.

>> DOUGLAS KELLNER: Those in favor say eye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

It's adopted.

The next one is resolution to approve additional funding for voting system certification costs incurred by provision NYSTEC independent security verification and validation.

All right.

Does anybody have any questions on the resolution?

Those in favor of the resolution say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: It's approved.

The next item let me make sure I'm right on that.

>> EVELYN AQUILA: What page is this?

>> JIM WALSH: Is there one resolution for NYSTEC or two?

>> DOUGLAS KELLNER: Pardon me?

(Overlapping speakers).

>> DOUGLAS KELLNER: Where is the second one?

>> TODD VALENTINE: Project management support one?

>> EVELYN AQUILA: What page is that?

>> JIM WALSH: I don't have a binder.

>> ANNA SVIZZERO: Both listed under E.

>> TODD VALENTINE: It's the back end.

>> EVELYN AQUILA: Request for approval, okay.

>> DOUGLAS KELLNER: All right.

Resolution to approve additional funding for voting system certification costs incurred by provision NYSTEC project management support.

>> EVELYN AQUILA: 1,000,700?

>> TODD VALENTINE: Yes.

>> DOUGLAS KELLNER: Those in favor of the resolution say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: Now the next resolution is resolution on acceptance testing funding.

>> TODD VALENTINE: That was

>> DOUGLAS KELLNER: All right.

They are all done?

>> TODD VALENTINE: Yes.

We did the acceptance testing.

>> DOUGLAS KELLNER: There are two other items.

We briefly discussed the response to the Cattaraugus County.

Should we direct legal counsel to just prepare an answer to them?

This was the request from Cattaraugus county to change their order.

>> HELENA MOSES DONOHUE: Do we have correspondence on that?

Was that just a verbal?

>> EVELYN AQUILA: There's a letter.

>> HELENA MOSES DONOHUE: No, I know the request.

What I'm asking you is the judicial response.

Was that they would not allow it; is that correct?

>> EVELYN AQUILA: Right.

>> DENNIS WARD: That was DOJ's oral response during the course of our weekly conference.

>> HELENA MOSES DONOHUE: That's all I want to know.

Should that be communicated to Cattaraugus county.

>> EVELYN AQUILA: We have to tell them we spoke to the judge.

>> HELENA MOSES DONOHUE: And where it came from?

>> DOUGLAS KELLNER: I would just authorize Allison and Paul to draft a response and let them send it out, you know, after they've circulated it.

I would authorize Allison and Todd to send the response

I'm sorry, Allison and Paul, and they should show it to Todd and to the executive directors.

Or would you prefer to have the executive directors send it out after.

>> HELENA MOSES DONOHUE: I don't think it makes

>> TODD VALENTINE: The letter was directed to the Commissioners.

However you want us to respond.

>> EVELYN AQUILA: Let Allison

>> DOUGLAS KELLNER: I think counsel should respond.

It's basically a legal response at this point.

>> HELENA MOSES DONOHUE: Specifically where the answer came from.

>> EVELYN AQUILA: I would tell them how to get in contact with the Federal court.

I would give them the judge's address.

(Laughter.)

>> DOUGLAS KELLNER: And home phone, and home phone.

(Laughter.)

>> DOUGLAS KELLNER: All right.

I think we have agreement on that.

The next one was the issue of the hardware revision to the Sequoia Image Cast ballot marking device.

I would urge us, we only approved the hardware revision at this point.

The firmware revision would await a report from SYStest.



>> TODD VALENTINE: To NYSTEC.

>> DOUGLAS KELLNER: I make that motion that we approve the report as recommended by staff for the hardware modification to the Image Cast ballot marking device.

>> JIM WALSH: Second.

>> DOUGLAS KELLNER: Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: All right, it's adopted.

The next item is the campaign finance preliminary determinations and complaints.

And there were two items that I would like to discuss on that.

So for that purpose I move that we go into executive

>> EVELYN AQUILA: Would you pass that down?

>> DOUGLAS KELLNER: Executive session to review the campaign finance reports.

And then we have

Go ahead, Terry.

It's not on the agenda, I don't think.

Did I miss it?

>> ANNA SVIZZERO: That's the resolution from earlier, isn't it?

The one you asked Anna

>> DOUGLAS KELLNER: Oh, yes, thank you for reminding me.

>> ANNA SVIZZERO: This is what Kim and I discussed.

>> EVELYN AQUILA: Escrow deposits.

>> ANNA SVIZZERO: We put together.

It by no means is a capped account.

I think the email that would

- Finance direction along to the vendors would certainly explain that.

But we thought that this would be amenable to the board.

>> HELENA MOSES DONOHUE: I kept one for myself.

>> TODD VALENTINE: Is this

Well, Anna, is this \$750,000 from each vendor?

>> ANNA SVIZZERO: No, to bring the escrow account up to 750.

>> DOUGLAS KELLNER: For each.

>> TODD VALENTINE: What is it currently now?

>> ANNA SVIZZERO: Each vendor has different amounts in there because their testing for ballot marking devices went to certain limits.

Rather than say X amount, if they bring the level up, some vendors have lift higher than others.

I can share that with you, I don't think it's private at all.

>> BOB BREHM: I know with Pat and Terry, you want to keep the tab in.

I know if you started with three machines and you dropped two, you know, it's the money that was in the account when we finished the cyber testing.

That money was never spent on cyber.

We, the board voted to take some of that money out of the 5 million account.

The money is still sitting.

>> TODD VALENTINE: My question now is, if this is important today, why is the deadline set at April 30?

>> ANNA SVIZZERO: Because the hardware testing we agreed to with SYStest was to begin the PDT review start the water testing and start looking at the source code review.

Some vendors have as little as \$80,000 in the account and some have \$400,000 in the account.

In order to do all of this testing for these four vendors, there needs to be money in advance in those accounts.

>> EVELYN AQUILA: Do you know if these vendors have this money?

>> ANNA SVIZZERO: I have no idea.

But the RFP that they responded to estimated the cost of certification to be a million dollars.

>> EVELYN AQUILA: Okay.

>> BOB BREHM: The difficulty, I know at some point SYStest will be doing, at some point very soon SYStest will leave that charge that is a State

charge for developing master test plans and go to specific vendor charges and will start eating up the money that they

have in their escrow account during, you know, very soon.

>> ANNA SVIZZERO: They left it already.

>> BOB BREHM: We have to figure out when you have the replenishment in there so the State isn't at risk to pay a bill that is a vendor responsibility.

Whatever the date is

>> EVELYN AQUILA: Is there any idea that this is coming down?

>> ANNA SVIZZERO: Yes.

We told them that in the vendor phone call that we had with them on Tuesday.

>> BOB BREHM: They asked for an accounting which this will include of how much money we had, how much money was billed by SYStest already.

And what, you know, give them a period of time to get their money available.

>> EVELYN AQUILA: I don't want to see half of our vendors to walk out on us because of the money.

>> ANNA SVIZZERO: Well, I would hope not.

>> TODD VALENTINE: It seems a rush.

It says April 30 and no justification has been brought as to the amount for them.

No details

>> DOUGLAS KELLNER: We are going to meet April 16, I'm going to propose.

>> TODD VALENTINE: Certainly, Commissioner Aquila's concern about the vendor community is something that needs to be considered.

That hasn't been addressed at all.

>> ANNA SVIZZERO: Well I

>> TODD VALENTINE: I think time allowing, I think it

>> DOUGLAS KELLNER: So what I would suggest, Anna, is that you send out, you know, concur that everybody should be in the loop on this, but send out notices to the vendors that this is in the works.

And then we'll actually vote on the resolution at the next meeting.

I was going to propose that our next meeting be April 16, which I think is three weeks from today.

>> EVELYN AQUILA: With a day of the week is it?

>> DOUGLAS KELLNER: It's a Wednesday.

Is that all right?

We'll ask Helen as soon as she comes back.

All right.

Does that make sense?

Are we agreed then that's what we will do?

The idea is to communicate to the vendors now that this is in the works.

And maybe even something a little more forceful, you know.

Like if you haven't paid up by April 30, then your testing will be suspended.

>> BOB BREHM: It is an issue that we learned in cyber where we had bills that exceeded the revenue that the vendors gave us.

I think that's the caution we have.

So we will have to warn them if we run out of money, we may have to suspend or give them an emergency notice without your input, I guess.

If they run out of money mid April, what do we do with SYStest?

In the past

>> DOUGLAS KELLNER: That's why, send out the notices now, circulate it around.

You're asking for 750,000 by April 30.

>> EVELYN AQUILA: That's a lot of money.

>> DOUGLAS KELLNER: This resolution doesn't address what happens if they run out next week.

So if we tell the vendors this is coming, they can still plan now and we can vote on it on April 16 after getting input and fees and everything.

In the meantime ... what?

>> HELENA MOSES DONOHUE: This room is being used.

>> EVELYN AQUILA: On the 16th?

>> HELENA MOSES DONOHUE: Yes.

>> EVELYN AQUILA: You're right, you're right.

>> HELENA MOSES DONOHUE: We have to pick another day.

(Overlapping speakers).

>> EVELYN AQUILA: Training.

>> DOUGLAS KELLNER: What?

>> TODD VALENTINE: We can move the board meeting if you want to stay on the 16th.

>> EVELYN AQUILA: The next week is when we are in Syracuse.

>> DOUGLAS KELLNER: No, we really should do it that week of the 16th.

It could be the 15th.

>> BOB BREHM: Lee and I both are attending the 16th, 17th and 18th.

You certainly can meet without us.

>> LEE DAGHLIAN: We have a shoot here Monday, Tuesday, Wednesday of that week.

So Thursday maybe?

The 17th?

>> HELENA MOSES DONOHUE: I'm going to have to check and give you a call.

>> DOUGLAS KELLNER: All right.

I have a deposition for Florida on the 17th.

>> TODD VALENTINE: We can have it on the 16th.

We don't have to have it in this room.

>> DENNIS WARD: It's going to be a brief meeting, isn't it?

>> HELENA MOSES DONOHUE: What is it for?

>>: A regular meeting.

>> DOUGLAS KELLNER: We have this.

>> JIM WALSH: Regular meeting.

>> DOUGLAS KELLNER: If we don't do it then, we get stuck with

We really need to meet before we go to Syracuse.

>> TODD VALENTINE: We can find space in this area.

You know.

>> EVELYN AQUILA: Pass it today and say that the following steps must be taken and they would be the steps that Anna would notify them and do the

>> DOUGLAS KELLNER: We still should meet.

We need to meet that week.

>> EVELYN AQUILA: I'm available.

>> TODD VALENTINE: Just a short distance.

>> EVELYN AQUILA: I'm trying to accommodate other people.

>> DOUGLAS KELLNER: All right.

Kim, are you okay with what we are doing?

On how we are proposing

All right.

So we are going to lay this over to our next meeting which is tentatively scheduled for April 16.

And in the meantime the election operations staff is going to communicate with the vendors to let them know that this is

coming and give them fair warning of what the certification costs will be.

All right.

**There's a motion to go into Executive Session to review enforcement cases.**

>> EVELYN AQUILA: Second.

>> DOUGLAS KELLNER: Those in favor say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: Thank you.

Alright, we are calling the public session back into session, following our Executive Session.

The motion is to approve preliminary determinations CMP-0605, -0622, -0623, -0626, -0689

and complaints without preliminary determinations CMP-0666 and -0691 with the revisions we discussed in Executive Session.

>> JIM WALSCH: So moved.

>> DOUGLAS KELLNER: Those in favor say "aye".

( All responde "Aye")

Opposed?

So we stand adjourned until our next meeting tentatively April 16th.