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JAMES A. WALSH: - - call our meeting to order, my name is Jim Walsh; I'll be chairing this afternoon's meeting.

I'd like to have our fellow commissioners introduce themselves.

DOUGLAS A. KELLNER: Douglas Kellner.

EVELYN J. AQUILA: Evelyn Aquila.

GREGORY P. PETERSON: Gregory Peterson.

JAMES A. WALSH: And...

TODD D. VALENTINE: Todd Valentine.

KIMBERLY GALVIN: Kimberly Galvin.

PAUL COLLINES: Paul Collins.

JOSEPH BURNS: Joe Burns.

ANNA SVIZZERO: Anna Svizzero.

PATRICK CAMPION: Patrick Campion.

JOHN CONKLIN: John Conklin.

GEORGE STANTON: George Stanton

WILLIAM MCCANN: Bill McCann.

ELIZABETH HOGAN: Liz Hogan.

BOB BREHM: Bob Brehm.

SPEAKER: [PH] Terri Greens.

SPEAKER: [PH] Bob North.

SPEAKER: [PH] Gina Bernham.

[STATIC ONLY]

Board of Canvassers

DOUGLAS A. KELLNER: Our first order of business for the Canvassers Meeting, certification of the election results from March 16th, 2010 special education for 13th Senate District.

So here is the paper - - needed to sign - -.

JAMES A. WALSH: - - thank you, sir.

SPEAKER: What's with these - - pens?

JAMES A. WALSH: I don't know, here you sign this.

SPEAKER: Psychological.

SPEAKER: - - pens around and we could--

SPEAKER: Evelyn, you need to sign this, - -.

EVELYN J. AQUILA: - - signed the last one - -.

[MULTIPLE VOICES]

SPEAKER: There for a minute I thought maybe I missed something; it wouldn't be the first time.

Board of Commissioners Regular Meeting

JAMES A. WALSH: Okay, we have successfully completed the Board of Canvassers Meetings and will now proceed to the Board of Commissioners Meeting.

Approval of Minutes

Item number 1, minutes of March 23rd meeting, I move adoption of the minutes as drafted, - - second?

SPEAKER: Second.

JAMES A. WALSH: All in favor?

SPEAKERS: Aye.

JAMES A. WALSH: Opposed, carried.

Unit Updates – Executive Unit

Unit updates, Bob Brehm and Todd Valentine.

SPEAKER: - -

TODD D. VALENTINE: You can go first.

BOB BREHM: Well, several items of note of course, dealing with the issues--it's always an issue now, because of the budget--well it has been an issue with the budget when we had a budget.

It's even more interesting now that we don't have a budget from day-to-day that does take an awful lot of time between Todd and I and Tom Jarose in the Administrative Office and OGS and just a process, any activity now.

So just so you know it's a little unclear without a budget how to pay the bills on a daily basis, but somehow we're keeping it going and I think that's about as clear as it gets at this point.

The other major issue is that we've been spending a lot of time, you know, getting ready for our conference.

It took a great deal of time and effort, I think the staff did a great job preparing for it, it was well attended.

And we heard a lot of favorable comments from people about the conference and also we spent a great deal of time on a number of items including the MOVE Act this month.

I know with our last quick meeting of the conference we approved some funding to make that process happen.

We did submit our waiver application to the [PH] FVAP; we are awaiting a communication from them whether or not they have additional questions or whether or not they've accepted it in full.

If I have to guess I'm going to guess they'll have some questions before they accept.

And also last Friday we submitted our request, our recommended scope of work under the FVAP Program that was the deadline for the states to have identified that they wish to participate in the federal pilot program and to give our proposed statement of work.

And they're estimating at the end of May or early June that the FVAP will have received back the information from the six potential vendors and we will be able to review with them the best selection for New York State.

So that, I'd like to say is on track, let's hope it doesn't get delayed any further under the federal program, because our goal is to try and be as clear as we can to the commissioners at their June conference as to what direction we will have for the fall.

Other than that I think it's more of a routine - - that we've done - -.

TODD D. VALENTINE: Well, yeah we did kick off the meeting with the auditors from the federal government on the HAVA spending yesterday, or formally - - kickoff meeting.

They'll be working on the audit, they estimate from five to six weeks, but some of that will be here some of

that work will be up at OGS with some of the spending records.

And they do intend to do visits of selected county boards, they've indicated at least New York City, and

we've given them a heads up.

SPEAKER: Yeah.

TODD D. VALENTINE: And once I figure out what the other counties are we'll help make those

arrangements for them and then, you know, go along with them and see if they have any questions and

just try to help.

EVELYN J. AQUILA: I understand how busy the counties will be during this time period.

TODD D. VALENTINE: Yes, well that's not the--

EVELYN J. AQUILA: They don't care, I understand that.

That's - - not part of the - - side, but - - back.

TODD D. VALENTINE: -- Yeah, not the best time.

EVELYN J. AQUILA: But they should understand, especially in the smaller counties.

TODD D. VALENTINE: Yeah, well they said they--you know, five to six weeks so that's, you know--

EVELYN J. AQUILA: Yeah, not too bad.

TODD D. VALENTINE: But they're bumping up against the season, certainly on the county level and our

level as far as the space that they occupy, physically occupying the spaces where we have the public, do the

public view.

EVELYN J. AQUILA: Yeah.

BOB BREAH: So hopefully they've be long gone before that gets filed in July, so--

TODD D. VALENTINE: And yeah, it's the same with the budget thing and one thing you may have and - -

discussed this.

I mean, the Senate and Assembly did pass the Governor's proposed budget continuing the furloughs and

that's still something we're working through.

So in case you had heard anything about that, I mean it's--I'm not sure exactly where it stands at this moment.

I mean, they passed that and a bunch of extenders - - for this week and then how that gets implemented we - -.

EVELYN J. AQUILA: - - talk about it at next month's meeting?

TODD D. VALENTINE: Yes.

JAMES A. WALSH: Thank you, and just for the record there is an attachment in our handouts today, it was several pages outlining the report from the various internal units.

The reports from the co-executives are an addition to the inserts here.

Election Operations, Anna.

JAMES A. WALSH: Oh, I'm sorry.

SPEAKER: - - ...Legal.

SPEAKER: - - there you are, pardon me.

Legal Unit

KIM GALVIN: That's fine, that's fine - -.

[STATIC INTERFERENCE]

SPEAKER: - - reports anyways.

KIM GALVIN: That's right, that's right.

JAMES A. WALSH: I'm so sorry.

KIM GALVIN: No, that's fine.

SPEAKER: - - report anyways.

KIM GALVIN: That's right, that's right.

JAMES A. WALSH: I was testing Anna to see if she was paying attention.

KIM GALVIN: Right, quite often we really don't have too much to add for my written report.

Paul has handled the lion's share of the work in the ongoing litigation matters, the primary ones that we're addressing now.

So after I'm done with just a few routine updates I'll ask Paul to give you a specific update on those things.

Just basically anyone that's required to file a financial disclosure with the public - - your deadline is quickly approaching and this is probably my last and final warning to all those.

It is due the 15th, which falls on a Saturday so you do have until the Monday the 17th, but I would just strongly urge you all to make sure that it's timely done.

Another thing that's not in our written report that I feel is significant enough to mention to you is that there have been a number of bills chaptered by the Governor recently that will require both internal coordination with the staff here and some county coordination.

Those are namely the--as they apply the voter registration or voting - -, namely the absentee ballot form changes, the domestic violence victim ballots and the affidavit ballots--the changes in the law to those.

SPEAKER: Yeah.

SPEAKER: Mm-hmm.

KIM GALVIN: [SOUNDS LIKE] The envelope, those three things--we're starting to meet on and trying to figure out how to implement those--it's taking a coordinated effort by everyone. And while they seem fairly straightforward, the application and the implementation are tricky in some cases.

SPEAKER: I agree.

KIM GALVIN: Particularly with the domestic violence issue, and then I'll have more to add in Executive Session about some other cases.

And Paul can let you know what's happening with our federal litigation that's imminent, ongoing.

PAUL COLLINS: Well, at this point and time we have two separate pieces of federal litigation.

The one in the Northern District was brought by the Department of Justice and within the confines of that litigation we brought an application under the All Writs Act against Nassau County to compel them to comply.

That is returnable Friday at 3:00 o'clock I think and Nassau County was granted an extension until tomorrow morning of the time within which for them to reply to our papers.

So I really can't tell you what their plot is, because we haven't received it and will not receive it today.

We'll receive it by 10:00 o'clock tomorrow morning and then Judge Sharpe will determine what, if anything he wishes to do with respect to the Nassau situation.

They got a piece of federal litigation that they we had, lo and behold it also involves Nassau County.

They had sued the State of New York and the Board in Nassau Supreme; we removed it to the United States District Court for the Eastern District of New York. And by Thursday our motion to dismiss the case has to be filed and we're moving to dismiss it on the basis that the venue was improper. And alternatively we're asking should the court determine not to dismiss, that they transfer it to the Northern District specifically up here, so presumably it would go to Judge Sharpe and he would have all of the same cases before him.

It just makes good sense from the point of judicial economy; we also anticipate that on Thursday Nassau County will file a motion in the Eastern District to remand the case back to Nassau Supreme. And we have two weeks to respond to that and that argument will be held on June 10th, I think at 1:00 o'clock down in the Eastern District on both our application and the State's application to dismiss and/or change venue and Nassau's anticipated application to remand to the state court.

EVELYN J. AQUILA: Could I ask you a point of information? If each federal judge has a different opinion who prevails?

PAUL COLLINS: Commissioner, the legal doctrine, and I have to be careful when I say this because

everybody's going to think I'm saying comedy, its comity. And concurrent judges should defer one to the other and that's the problem and that's why we're asking it to go back to the Northern District, because we don't want two separate co-equal federal judges reaching different opinions on the same matter.

EVELYN J. AQUILA: Yeah, and that's what I'm concerned about.

PAUL COLLINS: Yeah.

EVELYN J. AQUILA: That would be like a stalemate?

PAUL COLLINS: No, I think the correct legal phrase is we would end up between a rock and a hard place.

[LAUGHTER]

EVELYN J. AQUILA: - -

JAMES A. WALSH: That works.

EVELYN J. AQUILA: That was a clarifying answer.

JAMES A. WALSH: - - legal terms, any questions or comments?

Anna, are you sufficiently alarmed that I'm going to [LAUGHTER] - -, please.

Election Operations Unit

ANNA SVIZZERO: Wow, we don't have much information to add to the unit report that was provided in your packets. We obviously were involved in preparations for the conference, we did distribute a number of procedures--I think 14 of them in total at the conference and have since posted those to the informational portal that's available to the county boards. And we continue to work with the Pilot Review Committee in the event that they have anything in that they want to explore.

We haven't heard back from boards that are absorbing those procedures, there's a lot there to absorb. There's a lot that they have to prepare for, they have to adopt these procedures or craft versions of them so that they're adopted at the local level and advise us of those.

So we definitely see our life ramping up in the Election Operations Unit with regard to receiving all of

those procedures from the county boards.

We continue to acceptance test units that are intended for New York City at our central acceptance test site here in Albany.

We have worked on the two--we have one resolution in your packet and the other item is for information, the resolution is relative to Hamilton County and purchasing their EMS (Election Management System).

And the other document that we provided for you was Engineering Change Orders--ECOs as they're called.

Just another acronym I'm sure you all were waiting to hear about, and we had those reviewed by SysTest and by NYSTEC and by Bob Warren and they are minor in change and do not require the recertification of any voting system.

So our procedure indicates that we would move forward with the delivery of units to us for acceptance testing and we would notify the Board at your very next meeting in writing of the result of this review. And that is the document that's in your Board packet, so we don't have much beyond that unless you have questions.

JAMES A. WALSH: - - questions?

Thank you, Anna.

ANNA SVIZZERO: Thank you.

JAMES A. WALSH: NVRA/PIO John Conklin?

Public Information / NVRA Unit

JOHN CONKLIN: Good afternoon everyone, I don't really have--I only have one thing to add to the written report.

All the units have now submitted their individual sections to the annual report, so we should be able to finish that up shortly.

We have three reso's which I can discuss in the new business part of the meeting, so unless anybody has

any questions?

JAMES A. WALSH: Thank you, John.

JOHN CONKLIN: Sure.

JAMES A. WALSH: Campaign Finance, Liz Hogan?

Campaign Finance / Enforcement Unit

ELIZABETH HOGAN: Thank you, Commissioner.

As I indicated in the written report the Campaign Finance Unit continues in a rather routine methodology in trying to advance the projects that we're working on and certain things that come up annually at this time of year.

I didn't hit it that we had a crafted a new handbook, it's now on the web.

We have some audits that are underway as I've indicated at the past few meetings and those continue.

Probably the thing I would like to highlight to you here is that we have started the annual seminar series, we started yesterday here in Albany.

Bill and I both went and observed the staff make the presentation, they've worked very hard on it and they did a very good job.

We have 20 of those scheduled; we know we have a statutory mandate to provide an educational component relative to the filing system.

And just for general information anyone who needs to register for any of those seminars the schedule is on our web and the registration is available on the web as well as calling us.

So if you have any questions?

JAMES A. WALSH: Questions?

Thank you, on to you George Stanton.

Information Technology Unit

GEORGE STANTON: Afternoon, Commissioners.

As Commissioner Kellner always says no - - Information Technology is good news, not a lot to add to our copious written report here which is full of technical terms.

But the only thing I do really have to add is that we did do the--

EVELYN AQUILA: George, could you speak up just a little bit?

GEORGE STANTON: Oh, the only thing that I do have to add is that we did do the National Change of Address (NCOA) processing last week, 11,600 and some odd thousand voters.

We parsed that data out and sent it to the counties yesterday, so they can do their NCOA processing.

We did have one vendor come in and demonstrate some interesting software to us, I think their name is [PH] ChecFed if I remember right and they have a software and hardware, which scans checks that could be of use to some of the larger filers in our campaign finance.

And they were looking to see if they could somehow capture the data from the check, which they actually do a good job of and somehow create a file that could be transferred into our filing software so that some of the larger filers could use it.

And we're going to assist them, you know, as much as we can on that without going way out of our way to--it's of no value to us, but it's of value to our filers. And that's basically all I have unless somebody has questions.

JAMES A. WALSH: Thank you.

EVELYN J. AQUILA: George, have we ever worked out the problem with New York City?

GEORGE STANTON: No, we have not.

EVELYN J. AQUILA: All right, thank you.

GEORGE STANTON: Mm-hmm.

Old Business – MOVE Act

JAMES A. WALSH: Item 3, Old Business, discussion on the MOVE Act which is the Military and Overseas Voter Empowerment Act.

BOB BREHM: We somewhat continue to discuss with the Federal Voting Assistance (FVAP) people where they are going with the program.

We are hopeful that the deadlines that they have told us are real, because it's getting to that scary point if they drag it out any further.

The RFQ that was released in March was originally supposed to be released in December and all of the dates kind of got pushed out, because of that.

But, you know, I think we are--you know, we've clearly identified the requirements that New York needs the vendors to respond to the FVAP.

As indicated that they hope to have an expedited response from the vendors that we can evaluate, they told us that the contracts are in place with the six vendors, that should we select one of them they will be able to pay them for the portion of work that they agree meets the minimum that FVAP will pay for.

Of course, we did learn during this as we pointed out in our report, in our conference call with the FVAP the minimum that FVAP will pay for does not meet the requirements of the MOVE Act itself.

So New York put the requirements as our requirements to make sure that we have a system that meets all the requirements of the MOVE Act and not half a pie, so we hope that that will be something that will work.

In this resolution that you approved at the last Board meeting you directed that we work with OGS to make sure that we deal with procurement at the state level for the portion that FVAP won't pick up.

And Todd and I had two conversations with OGS to communicate to them to get that process started and that our desire that we put in the RF--in the scope of work and it's not a surprise--is that we want a system in place functioning by no later than July 15th.

And our goal is, of course, to be able to communicate to the Commissioners at the June conference what that selection is.

SPEAKER: We're hoping. [LAUGHTER]

BOB BREHM: That's our plan.

SPEAKER: That's the plan.

DOUGLAS A. KELLNER: So Bob, can you explain how the State will fund the unfunded portion of this and how we could do the contracting in time?

BOB BREHM: -- Well, OGS felt that it was possible; they would need to move expeditiously with the Office of the State Comptroller. It probably will take a phone call to the Office of the State Comptroller just to let them know what time pressure we're under and what the situation is, but it's never over until it's over. The biggest issue is having a state budget in place, we intended to use the 2010 requirement money to pay for the MOVE Act implementation, but we don't have a budget in place to authorize us to use the money the way the Governor proposed in the budget.

So that's one issue that we need to hopefully resolve and as an interim measure. At the last meeting you voted to allow us to take some of the money out of the 2008-2009 requirement money where the Legislature said you could convert some of that Aid-to-localities money for state purpose.

So our goal is, until we get a state budget, is to target that money, and when we get the state budget we'll put the money back from the 2010 requirement.

But the majority of the issue that I think we have is if the federal contract's in place and the FVAP Program moves as quickly as they do we'll get the important initial conversion work that needs to be done to be ready for the 15th. And the majority of the work in place by then and OGS didn't tell us it wasn't possible yet, so we think it's possible. And since it's still going through the process I don't want to say too much about the procurement effort, because I don't want to jeopardize our--we can talk about it in Executive

Session - - more specifics.

EVELYN J. AQUILA: -- Bob?

ROBERT BREHM: Yeah.

EVELYN J. AQUILA: Bob, this may be a far out question, is there any way to get any more money out of the federal government?

BOB BREHM: Well, that is a very good question.

EVELYN J. AQUILA: Because I'm hoping maybe they'd help us.

BOB BREHM: I think it's important, the Congress--the President's Executive Budget did not include any additional funds for requirement payments and there were no funds for the MOVE Act implementation.

EVELYN J. AQUILA: Mm-hmm, you told me.

BOB BREHM: We did hear that Congress put forward a proposal that they specifically put a MOVE Act appropriation and also a Requirements Fund application.

I know NASS came out with a--the National Association of Secretaries of State - - a report highlighting the fact that there's still an unmet need out there for the states that have to implement the MOVE or that HAVA.

So there's a need to fully fund the requirements payments and certainly I think the resolution on the table today to deal with the issue...with the issue of Hamilton County's funding...proves that the counties don't have all the funds they need under the federal program, because the federal program never fully funded it.

So that I think it's important to point out to anyone who communicates with their federal representatives that there's still a need in New York State for the Congress to fund the requirements payment.

And since they gave us this federal mandate and they claimed that they would give us a MOVE Act appropriation I think it behooves them to consider making a specific MOVE Act appropriation.

EVELYN J. AQUILA: Mm-hmm, then you should speak to a few of our congressmen?

BOB BREHM: I would speak to all of them.

EVELYN J. AQUILA: Right, that's good.

JAMES A. WALSH: Good point.

EVELYN J. AQUILA: Thank you.

JAMES A. WALSH: Thank you, Bob.

New Business – Reso to Allocate 2010 HHS VOTE Grant Funds to LBOEs

New business, vote on a resolution to allocate HHS 2010 VOTE grant funds to local boards of elections, Tab 3 in your booklet.

Do we have a motion?

EVELYN J. AQUILA: Do we want an explanation of that - - or just move ahead?

DOUGLAS KELLNER: I so move.

JAMES A. WALSH: And a second?

GREGORY PETERSON: Second.

JAMES A. WALSH: Another question, any discussion?

EVELYN J. AQUILA: Aye--oh, I'm sorry.

JAMES A. WALSH: That's okay, any discussions?

All in favor?

SPEAKERS: Aye.

JAMES A. WALSH: Opposed, carried.

Reso to Transfer Federal Grant Funds to State Operations Account for Voter Education Purposes

Item B; vote on a resolution to transfer federal grant funds to the state operations account for voter

education, Tab 4 in your booklet.

Have a motion?

SPEAKER: So moved.

JAMES A. WALSH: A second?

SPEAKER: Second.

JAMES A. WALSH: Any discussions?

EVELYN J. AQUILA: Aye.

JAMES A. WALSH: All in favor?

SPEAKERS: Aye.

JAMES A. WALSH: Opposed?

EVELYN J. AQUILA: - - saying my aye, aye.

Reso to Allocate 2008 HHS VOTE Grant Funds to LBOEs

JAMES A. WALSH: Carried, Item C vote on a resolution to allocate HHS 2008 VOTE grant funds for use by county boards of election, Tab 5 in your booklet.

Can I have a motion?

EVELYN J. AQUILA: So moved.

JAMES A. WALSH: A second?

SPEAKER: Second.

JAMES A. WALSH: Any discussion?

SPEAKER: Aye.

JAMES A. WALSH: All in favor?

SPEAKER: Aye.

BOB BREHM: Wait a minute, this is the--we're up to D?

JAMES A. WALSH: C.

BOB BREHM: So it's C, all right.

JAMES A. WALSH: Carried, [LAUGHTER] Item D.

SPEAKER: That's the one outlined in red - -.

EVELYN J. AQUILA: Uh-huh, yeah.

JAMES A. WALSH: So skip D. [LAUGHTER]

SPEAKER: No, it's - -.

Reso to Adopt 9 NYCRR 6210.18 (Post-Election Audit Procedures)

JAMES A. WALSH: Item D, vote on resolution to adopt 9 NYCRR 6210.18, Tab 6 in your booklet.

Can I have a motion?

SPEAKER: So moved.

JAMES A. WALSH: A second?

EVELYN J. AQUILA: Aye.

JAMES A. WALSH: Any discussion?

DOUGLAS A. KELLNER: So this is the finalizing of the audit regulations and I guess I want to point out that we had a lot of discussion about this before the draft went out, that there have been numerous comments that have come in during the comment period.

And that the text of the regulations as we have it now is basically the best that we could do that we get four commissioners to agree on. And my own view is that the process during the pilot project worked out fairly well and the audits were done. I personally would still add to the audit regulations a requirement for escalations in very close races. And in particular, I still think that the procedure that New York City adopted on a bipartisan basis in 2008, which was that if the outcome of the race is fewer than ten votes or half a percent of the margin then there would be a full-hand count. And what I'm concerned about in the future

is that our statue says that we can escalate by having a vote of the State Board of Elections, the County Commissioners can escalate or a court order can escalate. So we have these three different sources, so we're all assuming that there can be escalations but it doesn't actually mandate the escalations if there is a close race and of course, it's at that time when everyone will be very partisan. And it is my view that the court should require an escalation wherever it is so close that there's any doubt of the outcomes. And I would have preferred to say that directly in our regulations, but since we couldn't reach a bipartisan consensus on that I will support this as the best way to move forward under the circumstances.

JAMES A. WALSH: Thank you Commissioner, all in favor?

SPEAKER: Commissioner Walsh?

JAMES A. WALSH: Yes?

PAUL COLLINS: Just so that I can be crystal clear, the resolution which you are adopting which is in your packet on page 3, item 4 has a deletion in it. There was some language that did not get deleted when we changed the resolution. The resolution that I will be filing with the Secretary of State for the purposes of publishing it in the state record just removes that, so this is--just so it's clear.

KIM GALVIN: It's considered though a minimal change, without changing the substance?

PAUL COLLINS: -- It is a non-substantial change, we have run it by GORR (Governor's Office of Regulatory Reform), they have no problem with doing it.

And frankly Laura Costello from Madison County is the one who pointed it out and I'm grateful to her, but this is the one that you're adopting just does not have that language in it.

JAMES A. WALSH: It doesn't have the - - okay, thank you sir. Now are we all in favor?

SPEAKERS: Aye.

JAMES A. WALSH: Opposed, carried.

Reso to Authorize the Purchase of EMS for Hamilton County

JAMES A. WALSH: Item E, vote on a resolution to purchase an election management software system for Hamilton County, Tab 7 in your booklet. I need a motion?

SPEAKER: Motion.

JAMES A. WALSH: A Second?

SPEAKER: Second it.

JAMES A. WALSH: Discussion?

DOUGLAS A. KELLNER: We should make it clear that we are doing this because of the mandate under the Help America Vote Act that Hamilton County must purchase the software system in order to be able to program the scanners. That for whatever reason the Hamilton County Commissioners or the Hamilton County Supervisors have not taken the steps within the deadline that New York State is under, under the court order with Judge Sharpe.

And therefore, since the State Board does have the power and is under the court order from the Federal Court we really have no choice, but to make this decision for Hamilton County. The result of course, will be that Hamilton County will be charged with these funds even though technically they haven't taken the steps necessary to spend them. So I do support the resolution for that reason.

JAMES A. WALSH: All in favor?

SPEAKERS: Aye.

JAMES A. WALSH: Opposed, carried.

Discussion on ES&S Change Orders

Item F, discussion of ES&S Engineering change orders facilitating language translations and overvote notice on certified ES&S and Dominion voting systems, Tab 8 in your package.

Who would like to lead that discussion?

EVELYN J. AQUILA: Well, I think Anna should speak of it--speak to, yeah I'm sorry.

DOUGLAS A. KELLNER: -- Anna should, Anna should, and Bob should.

SPEAKER: - -

ANNA SVIZZERO: With regard to the ES&S changes they are the kinds of changes that we'll start seeing now, for example suppliers for certain I don't know, light bulb switches or whatever may no longer be available to them.

They have to find alternate sources; those kinds of issues are generally categorized as these engineering change orders. And the vendor is required to submit documentation to us, we provide it to the testing lab to review when they are considered to be *de minimus* or when testing is provided that was completed by an alternate lab. We receive those reports, we review them with NYSAD and we're required by our procedure to continue to move forward. But because of the *de minimus* nature of that they don't require a Board vote, they don't require recertification, we're to notify you in writing of those changes at your next meeting. So that's what this ES&S document does.

We did add to the memo however, that we are authorizing the inclusion of Excel software on the secure stand-alone work station that the election management system, that the [PH] EMS runs on in this ES&S world, because it helps facilitate the importing of language translations and audio files.

And we felt more comfortable having it on that secure terminal rather than using other computers in the office and you could possibly import a virus or some other malicious information that was not considerate of the secure world that we want the EMS to run in.

So since it would facilitate that process and do it in a more secure way we categorized this inclusion as we did backup software and antivirus software that also will reside on these secure terminals or EMS work station.

So those are for your information and don't require a vote, but do bring you up to speed as to where we are with the latest changes from ES&S.

DOUGLAS A. KELLNER: So Anna, within our packet here you had the overvote notification from ES&S and the blank ballot notice and I guess my concern is that, you know, I understand the staff has been reporting back to us that it would unfeasible to do these changes prior to this year's elections.

And if you could explain why that is in fact, the case and I guess--go ahead, I'll let you start and then I'll - -.

ANN SVIZZERO: We are aware of issues that the Brennan Center and others have raised with us with regard to the nature and perhaps tone of the overvote message that appears on both voting systems they seem to have concentrated on the ES&S system.

But what's good for the goose is good for the gander, so we need to look at all of our messages.

We have had a couple of conference calls with them in the discussion; we've had some conversations in-house.

We did speak to - - and learned that if we were to make a change in text first of all we'd have to agree to that text change.

It would be a software change in both of those systems, which would require several weeks for the vendor to make.

There would be testing involved, acceptance test of the source code changes, there would be the independent source code review by our subcontractor with NYSTEC.

And if there were any functional testing and we certainly would want to ensure that there was, our own staff would do that so that we could mitigate the costs of this kind of change.

What we didn't want to do was once we added those weeks up it put us right into petition time and the boards have so much on their plate already this year that an upgrade at the same time that they were processing petitions.

And trying to build ballots for the first time ever would, we think just be another opportunity to diminish the true success of the overall implementation in New York.

We were hoping that we could spend our time exploring the language options, discussing with the Board if they wanted functional changes as well as textural changes and then continue to work with the vendors to make those changes through this year and implement them after the election.

So that any other upgrades that the vendors wanted to make, either as they're moving through the summer or as a result of the full - - in the fall would become part of a single upgrade.

And that would certainly eliminate the Board's having to upgrade every time some particular issue got tweaked and it would be a more compact process and one that was a lot more manageable.

EVELYN AQUILA: Anna, how does the language option work; I mean, say New York City, where there's several languages?

ANNA SVIZZERO: There's a language icon on the screen, so that if you get a message you can press that icon and it will give you the languages that you can select from.

EVELYN AQUILA: Okay.

ANNA SVIZZERO: So that you can read it.

SPEAKER: Yeah, I wasn't sure.

ANNA SVIZZERO: Yeah, in the language that you like basic--

SPEAKER: No, I saw that but I wondered--

ANNA SVIZZERO: -- The State Department is - -.

SPEAKER: --if the machine itself would carry as many languages?

ANNA SVIZZERO: Yes.

SPEAKER: It would have to and that's going to be--

ANNA SVIZZERO: -- Yes.

SPEAKER: -- You just push the button and it's

EVELYN AQUILA: But my point is that I want to make, I can see why this would not be done quickly, it

could not be done so quickly.

Now I may be wrong, but in thinking about the language option to me it seems like it becomes a harder

thing but maybe not.

I'm not technical, so--

ANNA SVIZZERO: There are a number of pieces to it, but I think in being responsible to the full roll-out

this year we had so many large counties that were not part of the pilot, you know, we need to marshal our

resources in that way. But I would certainly like to use the time during the summer to resolve the issues of

language and functionality and get that to the vendor, so that they can include that work in whatever else

they're working on and make an upgrade a single event if the Board were so inclined.

SPEAKER: Yeah.

DOUGLAS A. KELLNER: Is that something that we can move forward on, that we're in agreement to do?

ANNA SVIZZERO: Yeah, no I--

DOUGLAS A. KELLNER: In other words--

ANNA SVIZZERO: What?

DOUGLAS A. KELLNER: --if we follow that timeline, I guess my biggest concern is that we need to start

laying the foundations now so that this will be ready when we make the next upgrade of the system.

SPEAKER: [SOUNDS LIKE] Incorporate it into the other one.

ANNA SVIZZERO: Right.

SPEAKER: Yeah, no that makes sense.

DOUGLAS A. KELLNER: Good, because I understand that the main pushback is that we don't want to do an

upgrade before this year's elections that would require acceptance testing and--

SPEAKER: The whole nine yards, no.

SPEAKER: It's - -

SPEAKER: -- - - major training issues.

BOB BREHM: The counties have been working and we've worked with them, they've been working to make sure their videos, their training, their manuals would--you know, some counties train early, some counties train just in time.

But, you know, if we roll something out later in the process we have to go back and revamp all our training--

EVELYN J. AQUILO: Yeah.

BOB BREHM: --and it's hard not to retool the - - to optical scan and train them once and then if we have to take that new thing out of their mind and train them on new screens - -.

DOUGLAS A. KELLNER: Well, I don't know that just changing the screen--

BOB BREHM: Well, it depends on how much we change it. The functionality, they're recommending that we change some of the functionality and--

DOUGLAS A. KELLNER: I'm not sure we all agree on that - -.

BOB BREHM: I don't mind working through a usability study and then we also will have the data from this year's elections. I'm personally not pushing to change the functionality and I think specifically the issue we're talking about is that some advocates are saying that the machine should automatically reject an over-voted ballot. But even - - slow down is to change the notice that comes with the button is one thing, and that--

DOUGLAS A. KELLNER: -- All I'm suggesting--

BOB BREHM: -- - - change the color of the button, - - that's functionality - -.

SPEAKER: -- That's what--

SPEAKER: Other than the timing, - -.

DOUGLAS A. KELLNER: All I wanted to change if you go to the ES&S over-vote notice page that

Anna has here, to me it's a relatively simple thing to change the screen from the existing screen, which is on the left-hand side to something like what's on the right-hand side with the graphics, of course, filled in. And, you know, the--

SPEAKER: I can see.

DOUGLAS A. KELLNER: As you can see instead of saying, "Don't cast a return ballot," it says, "Correct your ballot."

So the new screen is more informative to the voter and then instead of the existing screen with the green button and a checkmark that says, "Cast ballot," as if they're suggesting that you should cast an over-voted ballot we would change that to say, "Cast your ballot with errors."

So that if the voter really does want to go ahead and vote an over-voted ballot it's not going to count with the over-voted race.

EVELYN J. AQUILO: -- But I think if they need additional time, yeah.

DOUGLAS A. KELLNER: Evelyn, just look at the--

EVELYN J. AQUILO: -- I'm looking at it, yes.

DOUGLAS A. KELLNER: --old and the new, the new is much more informative.

EVELYN J. AQUILO: -- Right.

DOUGLAS A. KELLNER: And all I'm saying is, is that--

EVELYN J. AQUILO: -- - - on it.

DOUGLAS A. KELLNER: I don't understand that we would have to do recertification to change the text on the screen any more than we have to do certification to change the names of the candidates on the screen.

EVELYN J. AQUILO: -- There would, because it's source code there would have to be a new build and anytime there's a new build there's a new version of source code.

DOUGLAS A. KELLNER: All right, so that I agree but if the only line of the source code that's being changed

is the page of what's displayed--in other words, in fact it isn't even changing the instructions. The source code will still say, "Go to blank," for the screen that gets displayed. And all we're doing is at the go-to location instead of putting the screen that's on the left we'd be putting the screen that's on the right. And that is yes, you're correct, it has to be the [PH] hash code checking, so that's why I'm agreeing that if we're not doing any changes that require a new hash code checking for the counties that we not do it until then, because that is a huge project to the counties.

But it's not a huge project for certification--

EVELYN J. AQUILO: -- No.

DOUGLAS A. KELLNER: --because it's a one-hour check to make sure that the only thing they change was the screen and not the rest of the codes.

EVELYN J. AQUILO: Well, Bob made a good point in saying I'd have to give you training all over again and I think that's important--

DOUGLAS A. KELLNER: -- I don't agree that you need new training for changing this screen.

EVELYN J. AQUILO: -- Okay, okay, well then people go in and they get, "What happened here?"

You know, "Why did this come up," - -

DOUGLAS A. KELLNER: -- Evelyn, look at it, it would--

EVELYN J. AQUILO: -- I know, we're looking at it here and we know this is our--but look at the poor - -.

[MULTIPLE VOICES]

DOUGLAS A. KELLNER: I'm agreed and also we should get a budget for it, because I'm not suggesting that - - token amount of money to get this done.

EVELYN J. AQUILO: -- Right, right.

SPEAKER: - -

BOB BREHM: - -

EVELYN J. AQUILO: -- And we should do it the right way, not the rushed way.

BOB BREHM: -- The other item that they're recommending is hard to see in a black and white picture, but that's all we had to work from because it was a PDF. But in the color printout they're recommending that we change the green and the red buttons to blue buttons, so we can--I mean if you look at the ES&S system which is a display--

[MULTIPLE VOICES]

EVELYN J. AQUILO: -- Right.

SPEAKER: -- - -

BOB BREHM: --that's a functional change, but - - change if we were going to follow that path with anything other than--you know, those are buttons that are physically built into the machine.

SPEAKER: Those are hardware changes.

BOB BREHM: So that's a hardware change, so that's where I think from our perspective we're looking at what do the four--what plan - - would recommend as a workable solution that's uniform throughout those systems. And then once you tell us - - then we can - -.

DOUGLAS A. KELLNER: I'm not pushing that, I mean we should look at it; we should get a budget for it. I'm not suggesting that we should spend huge amounts of money, but if it's a small amount and it's going to be--

SPEAKER: - - we should work towards that.

DOUGLAS A. KELLNER: Right, right.

SPEAKER: -- Yeah.

DOUGLAS A. KELLNER: As it is now, you know, we're spending $3,000 - - disabled voters - -.

SPEAKER: -- Well, that's another problem.

SPEAKER: Okay, good.

JAMES A. WALSH: Thank you for this discussion, I think we're all - -.

DOUGLAS A. KELLNER: Thank you, all right now so do we have to do a vote on this - -?

SPEAKERS: -- No.

SPEAKERS: [MULTIPLE VOICES] - -

JAMES A. WALSH: Executive Session, do - - Executive Session, so move it?

DOUGLAS A. KELLNER: Yes, I move that we go into Executive Session to discuss - -.

SPEAKER: Enforcement matters.

DOUGLAS A. KELLNER: Actually, I'm prepared to do enforcement without the Executive Session.

SPEAKERS: Okay.

DOUGLAS A. KELLNER: Evelyn,

EVELYN J. AQUILO: -- But I believe we can't discuss the cases.

DOUGLAS A. KELLNER: I have nothing to discuss on the cases, if you have to something to discuss we

should go into Executive Session?

EVELYN J. AQUILO: -- No, no.

SPEAKER: We don't have anything - -?

JAMES A. WALSH: No, - - approve the recommendations.

DOUGLAS A. KELLNER: All right.

EVELYN J. AQUILO: -- We don't even have - -.

DOUGLAS A. KELLNER: Do you want to do that first and then we'll do the resolutions?

JAMES A. WALSH: -- Sure, - -

DOUGLAS A. KELLNER: All right, I move that we approve the recommendations on enforcement matters

as set forth by the Enforcement staff and printed on the agenda under Part 5.

JAMES A. WALSH: Is there a second?

SPEAKER: Second and a motion.

JAMES A. WALSH: All in favor?

SPEAKERS: Aye.

JAMES A. WALSH: Opposed, carries.

All right.

DOUGLAS A. KELLNER: So the Executive Session is to discuss the litigation matters-

EVELYN J. AQUILO: -- Yeah.

DOUGLAS A. KELLNER: --and we have the personnel issues - -.

EVELYN J. AQUILO: -- Personnel issues - -.

DOUGLAS A. KELLNER: And--

EVELYN J. AQUILO: -- And we have enforcement matters of - -.

DOUGLAS A. KELLNER: --there are no other enforcement matters.

[MULTIPLE VOICES}

SPEAKERS: - -

SPEAKER: - - tell me?

SPEAKER: I got you.

SPEAKER: Well, are there any enforcement matters?

JAMES A. WALSH: All right, a motion to go into Executive Session.

DOUGLAS A. KELLNER: No, no enforcement matters--

EVELYN J. AQUILO: -- From that meeting - -?

DOUGLAS A. KELLNER: --just personnel.

JAMES A. WALSH: Oh, I'm sorry yes; the next meeting date will be June 22nd here at the normal hour of

noon.

A motion to adjourn?

SPEAKER: High noon.

SPEAKER: Well, to Executive Session so moved.

JAMES A. WALSH: - - A second?

SPEAKER: Second.

Executive Session

SPEAKER: - - Executive Session.

End