

Table of Contents

Opening of Regular Meeting.....1
Approval of Minutes.....2
Unit Updates
 a. Executive.....3
 b. Legal.....4
 c. Election Operations.....9
 d. Public Information.....13
 e. Campaign Finance.....14
 f. Information Technology.....15
Old Business:
 a. Discussion of MOVE Act.....17
New Business:
 a. Amendment to 9 NYCRR 6212.9 NYSBOE Regulations (Poll Book).....20
 b. Resolution to Approve Changes to Affidavit Ballot Envelope.....23
 c. Discussion of ES&S Engineering Change Orders.....25
Enforcement Determinations.....28
Executive Session.....29
End.....29

Board of Commissioners Regular Meeting

DOUGLAS KELLNER: >> All right, so we're ready to get started.

Good afternoon.

My name is Douglas Kellner.

I'm Co-Chairman.

I'll ask the other Commissioners to introduce themselves.

JAMES WALSH: >> Jim Walsh.

GREGORY PETERSON: >> Gregory Peterson.

EVELYN AQUILA: >> Evelyn Aquila.

DOUGLAS KELLNER: >> And would the staff who are present identify themselves.

>> Bob Brehm.

>> Liz Hogan.

>> Bill McCann.

June 22, 2010, NYSBOE Commissioners Meeting

- >> George Stanton.
- >> John Conklin.
- >> Pat Champion.
- >> Anna Svizzero.
- >> Joe Burns.
- >> Paul Collins.
- >> Kim Galvin.
- >> Todd Valentine.
- >> And our guests please.
- >> Aimee Allaud, League of Women Voters of New York State.
- >> Mary Farenzo, Whiteman, Osterman & Hanna.
- >> Frank Malatesta, Intern.
- >> I'm Greg Jones, Commission on Quality of Care and Advocate for Persons with Disabilities.
- >> Bob Gronzniak, NYSTEC.
- >> Nils Ekberg, NYSTEC.
- >> Joe Neddler, State Independent Living Council
- >> Bob Warren, - -
- >> Tarry Breads, - -

DOUGLAS KELLNER: >> Great.

Well, thank you all for coming.

Approval of Minutes

The first item on our agenda today is the approval of the minutes from May 11th, and the Minutes have been distributed. Are there any corrections?

June 22, 2010, NYSBOE Commissioners Meeting

EVELYN AQUILA: >> No.

DOUGLAS KELLNER: >> So is there a motion?

GREGORY PETERSON: >> So moved for approval.

DOUGLAS KELLNER: >> Those in favor say aye.

>> Aye.

DOUGLAS KELLNER: >> Opposed? The Minutes are adopted.

Unit Updates – Executive Unit

The next item is the Unit Updates. We'll start with the Executive Directors, Robert Brehm and Todd Valentine.

ROBERT BREHM: >> One of the larger issues that impacted us during the last period of time since the last meeting was the completion onsite of the Federal HAVA Audit. It's something we knew would be coming one day when we accepted the federal funds, and they said that they could be onsite from five to six weeks. And, it really was about less than two weeks I think from the time they actually started. So we thought that was a good sign. We won't know for sure until we get the written report, but their exit audit with us, the do tell you what they're working on. But more importantly, we asked them what did they notice that stood out as being good news? And one of the things they really mentioned to us was the onsite visits to ... It was ten counties that Joe and Anna's unit helped coordinate from Suffolk County to Erie County and places in between. And, they had mentioned that they were very impressed with the organization, the asset tracking, the ability to know where all the equipment was, the security. Other sites they visited were very positive. So I thought that was a good indication.

They liked the fact that the way New York State approached this by creating the statewide contract and to run the reimbursement for those other funds like education and training through the State.

You know, they provided information to OGS as to what random purchase orders they wanted to see.

June 22, 2010, NYSBOE Commissioners Meeting

They could see all the documentation and it really made for a very concise period of time they had to be here in order to look at things. So, we're waiting for their written report to have a chance to review it and comment on it, but so far I think it was very positive and more importantly no surprises.

Just in general, we continue to work on other issues at the agency. I know the Election Commissioner Conference is this week. We are going for the state presentation this Thursday afternoon. So, we have a number of workshops planned for various people here from the Board to answer the questions that the County Commissioners have asked us to cover both from a HAVA update to a legal update and other issues related to the current list of items on their agenda.

DOUGLAS KELLNER: >> Anything else?

TODD VALENTINE: >> No, that about covers it. That's good.

DOUGLAS KELLNER: >> All right, well thank you.

Legal Unit

So we'll move to Legal. Kim Galvin.

KIM GALVIN: >> Thank you, Commissioner. Just a few things to add to our written report... basically, at this time of year often times the Counsel's Office will work with the Elections Operations unit to review the documents that come in with regard to the nominations or the petitions. We did have occasion to review all the statewide nominating documents, and we did them, just reviewed them. They were all sufficient and there were no objections filed. That's why you don't have a prima facie report to rule on this afternoon. But, I anticipate from the meetings moving forward that you'll have some items to deal with in that regard.

And the only other thing is that the Legislature has passed a significant number of bills that have affected the Board of the election process, and we have as a group or as an agency monitored what's come out of those things.

June 22, 2010, NYSBOE Commissioners Meeting

And Paul has worked to pre-clear any of those items that we think may need pre-clearance through the Department of Justice's process. And, other than that, there are the very busy questions and answers given with regard to the election process that's getting pretty much underway. And, we've been very busy and I'll ask Paul to speak specifically to the updates with regard to particularly the Nassau County litigation that we have. There's been quite a bit of activity. He can give you an update with regard to that.

Paul.

PAUL COLLINS: >> With respect to our pre-clearance, we are current, current, current, through Chapter 129, which was just signed the other day. All of the legislation which in any way, shape or form that affects the electoral process in New York has gone to DOJ for pre-clearance. The monumental legislation changing the date on which the enrollment figures have to be out every 4 years has been pre-cleared. The rest of it we haven't heard back yet from them.

We also have submitted all of the policies and procedures necessary to convert to the electronic voting system for pre-clearance as well.

With respect to the litigation, the litigation brought by the Department of Justice to compel New York to comply with HAVA is progressing.

An offshoot of that litigation was an application made to Judge Sharpe under the All Writs Act, which he granted, and issued a mandatory injunction against Nassau County compelling them to roll out the new machines in September. Nassau has taken an appeal to the Second Circuit of that Order. And, I'm told by the Department of Justice that they are seeking a stay, which is not unusual, and they may well be seeking an expedited hearing which would again not be unusual. We have not been served with papers on the State as yet, but I'm sure they're coming albeit the Order was filed nearly a month ago.

With respect to the second piece of litigation involving Nassau County, it is a suit brought to challenge, under State law grounds, the Constitutionality of ERMA. Judge Bianco remanded it back to Nassau Supreme

June 22, 2010, NYSBOE Commissioners Meeting

on 14 June. So in my reckoning we have until, I think, the 4th of July to answer or otherwise move with respect to that litigation. If you read Judge Bianco's decision, it's an interesting road map to the various defenses we would have in the State Court proceeding challenging the Constitutionality of ERMA. But, he felt that they had limited their claims to state law issues, and he was not going to sustain federal jurisdiction on a removal basis. I don't think that that order is appealable.

DOUGLAS KELLNER: >> I'm sure it isn't. I sent you the Thermatron and Southwest Bell rulings. But, Paul, I guess the principal point that Judge Bianco made is that Judge Sharpe's ruling was still res judicata and that Nassau would be bound by that ruling; that any State Court judge hearing the proceeding will still have to make a determination in accordance with Judge Sharpe, or to make it consistent with Judge Sharpe's ruling.

EVELYN AQUILA: >> Paul, one question.

DOUGLAS KELLNER: >> Sure.

EVELYN AQUILA: >> Just a thought. Has any other state challenged the Constitutionality of HAVA against their state? I was just curious if it happens - -

PAUL COLLINS: >> Well, there is this section of the Constitution, Article 6, Clause 2, the so-called Supremacy Clause, that would make that rather a fool's errand. Nassau County, and again, I don't presume to speak for Nassau County...

EVELYN AQUILA: >> Of course, not.

PAUL COLLINS: >> But, they seek to split the hair, so to speak. They are asserting that while we must comply with HAVA as a matter of federal law, in ERMA the State Legislature went too far in requiring that we abandon the lever machine system. And also, they seek to assert that essentially the electronic voting system unlawfully delegates to a third-party not a member of the various County Boards of Elections the task of counting the vote. I can't conceive that there's a difference between that argument and a

June 22, 2010, NYSBOE Commissioners Meeting

concomitant argument that one would make, isn't that what a lever machine does, too? But, that's how they seek to split the baby, so to speak.

EVELYN AQUILA: >> So no other state has ever done this?

PAUL COLLINS: >> Well not certainly on the grounds of State ...

EVELYN AQUILA: >> Yeah.

PAUL COLLINS: >> ... Constitutional issues.

EVELYN AQUILA: >> Thank you.

DOUGLAS KELLNER: >> And Paul, I wanted to clarify on the first point that it was the Commissioners, that it was really the Department of Justice that insisted that we make the formal All Writs application to Judge Sharpe, that the Commissioners had proposed a more moderate course originally. And, that DOJ had insisted that we needed to make it formal. And so, the application to get the formal letter from Nassau County really was done at the insistence of the Department of Justice.

PAUL COLLINS: >> It would appear, Commissioner, that that application has gotten their attention.

DOUGLAS KELLNER: >> Yes. All right, and then I guess one last thing that was going on is that there's a much older lawsuit that the Justice Department had originally won under the NVRA that's really directed at the State University and the ...

PAUL COLLINS: >> Oh the SUNY CUNY, yes.

DOUGLAS KELLNER: >> ... and the college system. And you want to just briefly explain what's going on there? And, I believe that it really doesn't affect the State Board of Elections, but I think the Commissioner should at least make it clear that we're going to get - -

PAUL COLLINS: >> Some time ago, DOJ moved and received summary judgment on the issues involved in the lawsuit. Specifically, the government's position was that under the NVRA, any state agency that provided disability services or any species of disability services had to be a reporting NVRA site. Some of

June 22, 2010, NYSBOE Commissioners Meeting

our state universities were doing it on a voluntary basis. The government insisted that it be done on a mandatory basis. The judge issued summary judgment saying that both the SUNY and CUNY institutions their Student Disability Services Office had to be mandatory NVRA reporters. And they also ruled that the community colleges, even though they were technically private institutions, if they received any State funding the community colleges also had to be mandatory. That's the big piece of it from the education part of the world, which is interesting.

DOUGLAS KELLNER: >> So right now they're negotiating the text of the final order, and my view is that the State Board does not have any issues in that fight.

PAUL COLLINS: >> Well, I've circulated the proposed drafts. No one seems to have a problem with it because we're just going to receive the information back.

ROBERT BREHM: >> Our only concern with the draft is the training of the disability office staff and the coordinators as to how we bring them into the system, whether or not they give us enough time just to get that part done. Certainly, we can do that. It's just a matter of coordinating the time.

PAUL COLLINS: >> Certainly this agency is committed to the concept of full voting rights for all citizens.

EVELYN AQUILA: >> Well, Paul, I'm interested in another quick thing. I hope I'm not wasting your time, but if they ...

PAUL COLLINS: >> By definition you can't waste my time.

EVELYN AQUILA: >> CUNY was one of my alma maters anyway, CUNY. NVRA they were saying if you receive State money you must do this. Private colleges receive State money, too.

PAUL COLLINS: >> The finding was that the SUNY and CUNY institutions were an alter ego of the State of New York and were really State agencies.

EVELYN AQUILA: >> So they're completely paid for by the State?

>> Yeah.

June 22, 2010, NYSBOE Commissioners Meeting

>> All right.

PAUL COLLINS: >> Yes, they sort of took a page out of some of the State Court rulings that dealt with open meetings and FOIA in regard to that aspect.

EVELYN AQUILA: >> Because I think any school I ever went to always got some kind of State money somewhere.

DOUGLAS KELLNER: >> Greg, is there anything you want to add on this?

GREG JONES: >> Not really, Commissioner, no. Thank you.

DOUGLAS KELLNER: >> All right. Then, thank you for the Legal Report.

Election Operations Unit

We'll turn to Election Operations. Anna Svizzero.

ANNA SVIZZERO: >> Thank you, Commissioners.

We have a few items to add to the written report that we provided. We have an update in that we requested that counties certify to us their complete transition to optical scan voting systems.

We have 15 counties that have done that to date. We're hoping to speak to a number of them at the Conference that begins later today in Lake Placid to point out that this needs to be done. The deadline we gave them was July 23rd, I believe. It's funny that in the 15 counties not all of them were the full pilot counties. So we had some new counties in there that are done, the full pilot counties that haven't exactly signed on yet. So we're just going to make sure that everybody understands what we're expecting by way of that certification.

We did modify the Bill of Rights to accommodate the results of the infamous Chautauqua lawsuit from late last year in that voters are directed to wait for a message that their ballots have been successfully scanned. And also, we modified some language with regard to the over-vote.

So that form was in your packet for information purposes. We will be sending that Bill of Rights off for

June 22, 2010, NYSBOE Commissioners Meeting

translation in Chinese, Korean, and Spanish and then once we get those translations back, we'll distribute the masters to all the counties. And, they can select which versions they need to make available to their voters.

We have weekly phone calls? We'll be having our third call with Nassau County tomorrow. We're hoping for some more detail from them. We do keep telling them what we're looking for, and they report in a narrative form. So I'm not sure that we're getting everything that we want, but we do follow up with each of those reports by phone. We have a bipartisan court team there that either three or four people that are on the phone with us when we have those phones calls, and the next one will be tomorrow afternoon. We had delivered to us Central Count Absentee Voting System from Dominion that hasn't been demoed for us yet. I believe we got their application this morning, Bob. So we'll be contacting them for a date for a demo. Obviously, the conference was going to impact who they had available to do that. And, we don't want to defer any of their staff from EMS training and installations that they're doing to demo this system for us. It's clearly not something that we envision getting used this year. So there is time to move forward with that at a later date.

As Kim pointed out, we have no objections or specs with regard to the documentation that was filed from the State Convention. So all of that information is on our website. John and his team make that available. And, I don't think I have anything else. Joe, do you have anything that we might have missed?

DOUGLAS KELLNER: >> Anna, some of the County Commissioners have been asking about the interpretation of 9-106 in the Election Law and whether or not it is required that they manually count the number of ballots that have been scanned at the close of the polls on Election Day. Would you just explain what the State Board's position is on that issue?

ANNA SVIZZERO: >> We did get into this a little bit at the January Conference, but I'd be happy to.

I don't think that anybody in this room has ever interpreted that provision in Statute to address ballots that

June 22, 2010, NYSBOE Commissioners Meeting

were already canvassed. And, ballots that have been scanned clearly have been counted. We have never advanced any position that indicates that ballots at the end of the night, which could number up to 2,500 in these scanners would then be manually hand counted and divided up by Boards by election district, etc. at the end of the 16-hour Election Day. We've never purported that that was our position. It's illogical. It makes the conduct of the 3% audit impossible since you're auditing the scanner and all of the ballots that that scanner counted. So there may still be some question out there. Maybe we could clarify it at the conference. I know that there's some proposed legislation that's working its way through the Assembly and Senate that does help clarify that, and maybe put a finer point on the concept that that really dealt with ballots that had not been counted. There were ballots that had been simply dropped in the ballot box. Never been scanned, never been hand counted, never have been canvassed, if you will. That's not the provision that ... that interpretation of that provision clearly would not impact ballots that have been scanned on Election Day.

DOUGLAS KELLNER: >> Bob has corrected me that it is 9-108 that is the provision.

But, I agree and even if the legislation that clarifies it shouldn't be adopted, I think we're all in agreement that the current statute really applies to ballots put in the emergency ballot box, but not in a scanner.

ANNA SVIZZERO: >> Right.

DOUGLAS KELLNER: >> Where the ballots have already been counted by the scanner, it's not necessary to count them on the closing of the polls - -

ANNA SVIZZERO: >> I don't mean to speak for my colleagues, but we've never had that kind of an interpretation or conversation here. Our Ballot Reconciliation process does not work that way.

The Election Day Procedures that we have don't get laid out that way. So I don't know why some County boards might be interpreting that bits differently other than in the old world you had the lever machine votes were counted. You might have had a box with emergency ballots in it. Those ballots would have to be

June 22, 2010, NYSBOE Commissioners Meeting

reconciled before they could be canvassed. Clearly, now the ballots are canvassed and the reconciliation comes later.

DOUGLAS KELLNER: >> And, of course, if there are emergency ballots that are un-scanned and they are not put into the scanner at the end of the day, which is an option that the counties have, then, of course, they would have to count the un-scanned emergency ballots that would go into the envelope.

ANNA SVIZZERO: >> Right.

Those were the hand canvassed and reported on a tally sheet and then those numbers would be added to the tapes that come out of the scanner.

DOUGLAS KELLNER: >> Right, but if the ballots had actually gone through the scanner and then counted by the scanner, then they don't have to be hand counted at the close of the election.

ANNA SVIZZERO: >> Right.

DOUGLAS KELLNER: >> All right.

EVELYN AQUILA: >> One quick thing. Anna, the clarification for people who might not know, we were talking about modifying the Voters Bill of Rights, not the Bill of Rights of the United States.

ANNA SVIZZERO: >> Yeah, I could take a shot at that; too, if you want, but I don't think we have that much time.

DOUGLAS KELLNER: >> And that's bill that was just signed by the Governor.

EVELYN AQUILA: >> When we said "The Bill of Rights," it was like - -

ANNA SVIZZERO: >> It is the Voters Bill of Rights.

DOUGLAS KELLNER: >> All right, anything else for Anna?

TODD VALENTINE: >> Just on that point, it was getting a little muddy there towards the end. The Boards have to recognize that, they have to, and Anna referred to it briefly, you do have to know how many ballots were counted. You still determine how many ballots went to the polling place, how many were voted.

We still do that same reconciliation.

EVELYN AQUILA: >> Oh, yes.

DOUGLAS KELLNER: >> But you don't have to open the scanner and physically - -

ANNA SVIZZERO: >> You don't have to do it on election night.

TODD VALENTINE: >> I just wanted to make that clear because it looks like we weren't figuring out how many ballots were used.

Well, no.

We are doing that.

There is a process and both 106 and 108 work together to make that determination.

DOUGLAS KELLNER: >> I think the issue, Todd, is that there are some people who are saying that at the close of the polls, you have to open the scanner and hand count the number of ballots counted by the scanner to reconcile it against the scanner number.

TODD VALENTINE: >> Yes, straight under the plain reading of 108 that's where if you are actually canvassing the ballots.

EVELYN AQUILA: >> Right, right that's what it is that they want to know.

DOUGLAS KELLNER: >> So we're all in agreement on that and I wanted to make it clear that all of us at the State Board are of the position that it's not necessary to hand count the ballots that have actually been scanned at the close of the polls on Election Day.

All right, anything else for Election Operations?

Public Information – NVRA Unit

Then we'll turn to NVRA and Public Information, John Conklin.

JOHN CONKLIN: >> Well, for once I have nothing to add to my written report.

DOUGLAS KELLNER: >> Thank you, John.

June 22, 2010, NYSBOE Commissioners Meeting

All right and I don't think there was anything significant. Why don't you just summarize the key parts where we're still doing the disability access monitoring of the counties and it's basically done and that there are no issues, right?

JOHN CONKLIN: >> Right.

ROBERT BREHM: >> Yes, there are a few counties that have not - -

ROBERT BREHM: >>I think we're down to 15 poll sites that were not accessible.

I think we're down to ...

JOHN CONKLIN: >> We're down to seven.

ROBERT BREHM: >> Seven. So we continue to work with those counties and keep working to reduce the number to hopefully be at zero.

DOUGLAS KELLNER: >> All right. Well, thank you, John.

Campaign Finance – Enforcement Unit

We turn to Campaign Finance, Elizabeth Hogan.

ELIZABETH HOGAN: >> Thank you, Commissioner. Basically, the written report that I submitted to the Commissioners stands by itself. It outlines briefly what the units have been doing within Campaign Finance over the past month. The only thing I would add to it would be a referenced as Bob made to the Election Commissioner's Conference. Bill and I will be attending the Conference, making ourselves available to talk about campaign finance. There were a number of new forms that were created and presented to the Commissioners at our own conference in April. And, we would like to be available to discuss those with them and other questions that they have about materials that we hand out at our own conference.

We also want to point out that July 15th is a filing date, and we certainly will be asking the Election Commissioners to assist us in urging that those filings be timely made for several reasons that we

June 22, 2010, NYSBOE Commissioners Meeting

certainly espouse the availability of that information to the public in as timely manner as possible.

But, on the other hand, we're also on the other back end of it trying to minimize the enforcement proceeding that we'll have to bring against the people who don't file.

So, we'll be talking to them about that.

As well, at the end of the Election Commissioners' Conference, will be the last of the regularly scheduled seminars that we give every year and which I referenced in the written report. Bill is going to present at that. And, I'm hoping that it will be an opportunity for Commissioners who did not have an opportunity maybe to attend one of the other conferences near them or in their own county even to come and be able to ask any kind of information that they want. And, we've also asked them to foster any participation that they could to build up the attendance there.

So with that, I think that summarizes basically what we're doing. Bill, do you want to add anything?

WILLIAM McCANN: >> Sure. I'd just like to take a moment. I'd like to introduce Frank Malatesta. I understand that he's our intern for the coming semester from - - law school, 2-L - - Frank is very energetic. He's a great resource, does wonderful research, which is always a luxury when you have someone who will do all the research that you wish you had the time to do. So, it's a very good help and we appreciate his kind services and he'll be here for the corpus of July and then he's getting married.

DOUGLAS KELLNER: >> Thank you, Frank. Thank you. All right.

So, anything else for Campaign Finance?

Information Technology Unit

Then we'll turn to George Stanton.

GEORGE STANTON: >> Good afternoon, Commissioners.

I wasn't here last week so you were spared my voluminous report of acronyms and gobbledygook.

I can forward it to you if you miss it. But I'll just give you kind of a quick rundown. It's sort of a lull

June 22, 2010, NYSBOE Commissioners Meeting

between the storms here for ITU as well as a lot of other units. So, we've been taking the time to ...

We've been updating and simplifying some of the campaign finance reports that run on the web to make them run more efficiently.

We were having some issues with people locking up reports on the web when they were running live reports. So, we've been rebuilding some of them. It seems to be working much better now.

Of course, we do our daily performance and issue monitoring for - - voter with the network, the applications, the VPNs between the counties and the State.

We did a health check at the end of May last year for the whole system to make sure everything was running well.

Last weekend staff came in over the weekend and shut down the system, applied all the latest patches and updates and everything. So it should be good now for the upcoming election season.

We assisted several counties. Some have moved their offices, some have moved equipment, some have updated equipment and that always requires working together with our VPN staff and their County IT staff to get things back up and running again.

We assisted with setting up the auditors downstairs so that they could have access to their emails and their Internet, all that kind of stuff, the federal auditors, that is.

And, we also accompanied them to the DR site so that they could do some inventory checks on the system down there, and, of course, with the system here as well.

So that's pretty much basically what we've been working on.

DOUGLAS KELLNER: >> All right. Thank you, George.

Anything else?

Old Business – MOVE Act

Then we'll turn to Old Business discussion on the MOVE Act.

June 22, 2010, NYSBOE Commissioners Meeting

ROBERT BREHM: >> Yes sir, MOVE Act. We approved the funding process and authorized Todd and I to work with OGS to proceed with the contracting. That's moving along in the process. We're hoping it will be completed within the next week or ten days at least from getting all the paperwork over to the State Controller's Office for that portion of the State Contract.

We also worked to finalize this at the time the way that the Federal Voting Assistance Program asked us to create a State scope of work, which we did. And then we modified it to take out the stuff they told us to put in because they changed their mind on what they wanted this scope of work to look like. So the portion that the federal government may pick up for us, they firmed up our scope. They sent it up to the vendors. Those responses are coming in and Todd and I are scheduled to go down and review those responses on the 29th of June. Hopefully, they will match up with the same vendor that we selected.

The Federal Program because of time and money is only given me a portion of the compliance mechanism. We still need the portion that the State picked up. So we're hoping that they're parallel their tracks and they'll come together at the end.

So that is moving along.

We also are giving a presentation on Thursday in an afternoon workshop with the proposed solution so that we can ... not our proposed solution but a proposed solution as to just walk the counties through how it will impact their actual program. So we have a slide presentation, and actually take them through how a voter would interact with the system, how the staff at the Board would interact with the steps through actually assigning a ballot and making the information sent out to the voter and then the response back from the voter.

So, we're doing what we can.

We're still limited since the procurement is still in the process of what we can say about the actual vendor that we're working on other than these are ... the steps are pretty much uniform.

June 22, 2010, NYSBOE Commissioners Meeting

How a vendor approaches the steps is kind of ... the steps are pretty uniform throughout all the vendors. It's just how their system tweaks it a little bit.

DOUGLAS KELLNER: >> So we're on track for getting this done for the primary?

ROBERT BREHM: >> Right, we still have to get the contract in place before we can do the training.

DOUGLAS KELLNER: >> And we have a June 30 and July 14 or 15, the two milestone dates?

ROBERT BREHM: >> Our dates are July 15 and July 30 in order to ... I mean, the federal law is we have to be up and running for the general. We're hoping to be up and running for the primary.

TODD VALENTINE: >> That's been our target.

DOUGLAS KELLNER: >> And the key will be communicating this to the counties because the counties will have to do most of the work, right?

TODD VALENTINE: >> Right.

ROBERT BREHM: >> And that's from our workshop were getting that. But, it's not the training level, but it's a little above training level so that the Commissioners can see what the tasks are and start identifying who their employees need to be in order to do the regional training. We're going to do regional training and fill in as necessary for that depending on the dates when we do the training. A county can either come to the training in their region or another region if that works better for them. And if we have to do more training, we'll get that done.

EVELYN AQUILA: >> Are you going to speak to them about this at the Conference?

ROBERT BREHM: >> Yes.

EVELYN AQUILA: >> Good. I think they need to hear it.

ROBERT BREHM: >> Oh, yes.

DOUGLAS KELLNER: >> It's the counties that aren't at the conference that are the biggest concern.

TODD VALENTINE: >> That's always a problem. We're still going to get something out to them as well.

June 22, 2010, NYSBOE Commissioners Meeting

ROBERT BREHM: >> We'll send something out to a number of - - slide presentations to all the counties so that when they get it they can - -

TODD VALENTINE: >> Getting some live feedback helps us to make sure that we may need to clarify things when we send it to people who weren't there. That does help them get all the information.

EVELYN AQUILA: >> I'm sure the counties are feeling overwhelmed.

ROBERT BREHM: >> And, if we have to do a Webinar...I mean, we could do a web training if we need to, if we can't get two groups together.

TODD VALENTINE: >> Yeah.

DOUGLAS KELLNER: >> And we have not yet received a formal ruling on the Waiver Request but we expect it.

ROBERT BREHM: >> We received a request for some additional information, mostly what are the contingency? The question that the feds asked us what are the contingency to ensure that ballots really go out 32 days before the General Election. And the Governor has signed the MOVE Act, which I believe is Chapter 104, around the same time we got the question. So we reminded them of what the current statute said, and what the new statute provided for contingencies to get the ballots out. And, I think they were concerned about the appearance of the ballot. The counties will have the ability when they make their PDF of their ballot whether they do it on their own EMS system or whether they contract out like a bed sheet ballot and a vendor that once they get that PDF approved, that can be attached and sent to the voter. You don't have to wait for the three or four days for them to actually print the ballot and ship you the ballot before you get the ballot out. So that that should allow enough time. So we answered their question. I don't know when we'll get their answer.

EVELYN AQUILA: >> Did we see any kind of copy of an idea of what they do or what that ballot will look like? Are they going to be a little different in each county do you think or are they all going to be exactly

June 22, 2010, NYSBOE Commissioners Meeting

the same?

TODD VALENTINE: >> Well, it's 8-1/2 wide by whatever is necessary so ...

DOUGLAS KELLNER: >> And they'll be using the EMS system.

TODD VALENTINE: >> Right, because we know what the ballot is going to look like.

EVELYN AQUILA: >> And they don't have to, right? You didn't check or anything?

TODD VALENTINE: >> No.

EVELYN AQUILA>> It's up to them at that point.

TODD VALENTINE: >> They already have to do the proofreading for that so ...

EVELYN AQUILA: >> I know they do. Yeah. I was just wondering if we still have another roll we have - -

TODD VALENTINE: >> Not an additional role.

ROBERT BREHM: >> I mean, what we envision, I know Anna and Joe have talked about it and we have.

We still have a few machines that need to be acceptance tested from New York City. We anticipate a new order for some additional machines and our staff will have to acceptance test them, but we also want a ...

KIM GALVIN: >> A certain number of machines...

ROBERT BREHM: >> Well, a certain number of machines, but it's like 800 or less. But they have enough to run this primary but they want some more machines that they claim will get that purchase order soon.

And, we're just trying to calculate out the days because the staff also we want to make sure that they're

available to answer questions to counties as they're actually going through the EMS, reviewing EMS

training as a refresher class. But, you know, you get questions as they're actually sitting down doing the

layout and we just try to make sure that we have staff allocated during the period of time to do both jobs.

New Business – Amendment to Part 6212.9 of NYSBOE Regulations

DOUGLAS KELLNER: >>All right, so we'll move onto New Business, and the first item of New Business is the Amendment to Part 6212.9 of the Regulations. That's Tab 3 of our binders, and this is just a technical

June 22, 2010, NYSBOE Commissioners Meeting

correction to have the poll book conform now to the new ballots scanning system as opposed to the lever machine public counting numbers, right?

ROBERT BREHM: >> Yes.

DOUGLAS KELLNER: >> All right, so is there any discussion on the resolution?

JIM WALSH: >> Move for approval.

DOUGLAS KELLNER: >> Those in favor say, aye.

>> Aye.

DOUGLAS KELLNER: >> Opposed? All right, it's adopted.

TODD VALENTINE: >> It's got to go.... It's not final, yet.

DOUGLAS KELLNER: >> So, now it's going to go out for publication?

TODD VALENTINE: >> Yes.

DOUGLAS KELLNER: >> Okay.

PAUL COLLINS: >> Unless Commissioners, the draft, if you wish to adopt it on an emergency basis, or you could also, Commissioner Kellner, adopt it on a consensus basis, but as you know, were anyone to object, that would be the end of that.

TODD VALENTINE: >> We assume there would be comments.

DOUGLAS KELLNER: >> So, we're going to put it out for comment.

PAUL COLLINS: >> Send it through you and start the SAPA process that you all know and love so dearly.

DOUGLAS KELLNER: >> In view of the fact that the statute now is already in place requiring the scanners, it is our position that this regulation is now--that the old regulation is anachronistic and, therefore, the ...

TODD VALENTINE: >> It's going to supersede the existing Regulations.

DOUGLAS KELLNER: >> Well, that the counties should go ahead and act on the basis of the new regulation even though it hasn't been formally adopted because their books should be referring to the stub numbers

June 22, 2010, NYSBOE Commissioners Meeting

rather than the public counting numbers.

TODD VALENTINE: >> And I don't think anybody's been putting height or eye color in a poll for a long time.

DOUGLAS KELLNER: >> Right.

ROBERT BREHM: >> I think the wording is vague enough that we can, on our own, make the change, but it would be good to clean it up in the long run.

TODD VALENTINE: >> It should be done.

ROBERT BREHM: >> Right.

DOUGLAS KELLNER: >> We wanted to clean up the regulations to conform to the statute and the actual practice, but we're all agreed that the old regulation is anachronistic and that the counties should be preparing their poll books to conform to the new text.

EVELYN AQUILA: >> The only thing that I saw as a question for me is that they tend to get at least – page 24, 25, or 26 -- the date of the election for which the list is prepared are they going to have to be prepared every year now?

ROBERT BREHM: >> Well, that appears on the page now so that...

EVELYN AQUILA: >> Right, it does appear on the page.

DOUGLAS KELLNER: >> ... so that the book has on a page.

EVELYN AQUILA: >> I didn't realize that.

DOUGLAS KELLNER: >> Yes, when you pull out the signature if you're copying the page, you know what book it came out of.

EVELYN AQUILA: >> Okay, they're listed. So, there won't be a new one every year then?

DOUGLAS KELLNER: >> It is a new one. These are the poll books.

EVELYN AQUILA: >> I know that. They weren't new ones every year.

DOUGLAS KELLNER: >> Yes, they were. They had to be printed.

EVELYN AQUILA: >> Now, now, we're - -

TODD VALENTINE: >> Under the buff cards.

>> Huh?

TODD VALENTINE: >> Under the buff cards.

DOUGLAS KELLNER: >> But the buff cards went out in 1999.

ROBERT BREHM: >> Oh, with the buff card the inspector after you saw them, they would put the date of the election and on the buff card.

EVELYN AQUILA: >> Right, right.

ROBERT BREHM: >> So what was - -

EVELYN AQUILA: >> I stand corrected but that's - - is this going to be a task every single year, but it is.

DOUGLAS KELLNER: >> It is. They have to print the book.

EVELYN AQUILA: >> Right.

DOUGLAS KELLNER: >> They have to print the poll book and they usually do it about two weeks before - -

EVELYN AQUILA: >> You'd think in most of the cases they would.

DOUGLAS KELLNER: >> All right. So we have approved the regulation for publication and we're urging the counties to comply in advance of the formal approval.

Consideration of Reso to Approve Changes to Affidavit Ballot Envelope

Next item is the Resolution to Approve the Affidavit Ballot envelopes.

Todd, do you want to just explain.

We had the statute this year and we had the ... The form has been circulated, and I think there is one change to the form.

TODD VALENTINE: >> The form, I think it goes to both but it's the same language. And we weren't able to do this.

June 22, 2010, NYSBOE Commissioners Meeting

DOUGLAS KELLNER: >> So let's start with the Statute. Chapter 62 this year ...

TODD VALENTINE: >> Right now, requires ...

DOUGLAS KELLNER: >> ... requires that the Affidavit Ballot envelope be used as a voter registration form.

So even if the person had not previously registered by filling out the Affidavit Ballot they will become registered. Most of the counties have already been doing this, but most notably New York City has not.

TODD VALENTINE: >> Right.

DOUGLAS KELLNER: >> So that's the real purpose of this.

KIM GALVIN: >> Just for clarity, too, it's a prospective thing. It's not for that particular ...

A lot of people have asked us.

DOUGLAS KELLNER: >> Right, it's not the same as same day registration.

KIM GALVIN: >> Right. A lot of people have asked us that, and it's not.

EVELYN AQUILA: >> I can imagine how they were - -

ROBERT BREHM: >> I think the only thing they knew from that is the affidavit only side. If you claim to change a party whether or not you can open their envelope then it hasn't changed, but that vote side where you claim a different party could serve as a change of enrollment. So it doesn't change the oath side. It only changes how the County treats the oath side.

TODD VALENTINE: >> I didn't understand that.

ROBERT BREHM: >> If they show up as say a Democratic primary or a Republic primary and they claim to be enrolled in the party by filling out the oath. I claim I'm an enrolled member of the party and they sign it, and you come back and you find that they really weren't enrolled. Well, you don't count their ballot but you could use that side now as a change of enrollment as opposed to saying you weren't enrolled in the party, here, fill out this piece of paper. And, then whenever it comes back we'll treat it as the genuine enrollment.

June 22, 2010, NYSBOE Commissioners Meeting

DOUGLAS KELLNER: >> I think now we understand it. Yes, and so it's ...

KIM GALVIN: >> So much for my clarification.

DOUGLAS KELLNER: >> All right. So the resolution now like there was one change on the form that we have here, right? Todd, do you want to explain it?

TODD VALENTINE: >> Yeah, we need to since this is a registration form that we're adopting, there's one small change that we need to put in box 11 on the form of the envelope. I'll pass it to you.

We have to put a little footnote in there to note as we do on our Voter Registration form, "Except the Independence Party which permits non-enrolled voters to vote in the primary elections."

And that's something we - -

DOUGLAS KELLNER: >> And that's something we have to do because of the Consent Order.

TODD VALENTINE: >> Right.

DOUGLAS KELLNER: >> All right, so with that correction is there a motion to approve the resolution?

JIM WALSH: >> So moved.

DOUGLAS KELLNER: >> Any more discussion? Those in favor say aye.

>> Aye.

DOUGLAS KELLNER: >> Opposed? All right, it is approved.

Discussion of the ES&S Engineering Change Orders

All right, the next item is the Discussion of the ES&S Engineering Change Orders, and that's Tab 5.

We have the Memorandum?

ANNA SVIZZERO: >> Yeah. This doesn't require a vote, its information on the change order. It's completely innocuous.

DOUGLAS KELLNER: >> So you just put this here so the Commissioners would ...

ANNA SVIZZERO: >> Be aware of it.

June 22, 2010, NYSBOE Commissioners Meeting

DOUGLAS KELLNER: >> ... know that there were engineering changes submitted?

ANNA SVIZZERO: >> Yes.

DOUGLAS KELLNER: >> And these are all minor hardware issues with components of the parts that Election Operations had determined do not make any functional or computer changes. And, therefore, don't need additional testing or approval?

ANNA SVIZZERO: >> Right.

DOUGLAS KELLNER: >> Okay. So noted. All right.

ANNA SVIZZERO: >> May I interrupt? In tandem with that, we had mentioned in our unit report that we were testing.... a number of Commissioners had requested on the Dominion System that the voting position appear as an oval rather than a square. And when we prepared our monthly update, we were in the midst of that testing and we indicated we thought it would be completed and it is. So we did provide the information that our own staff conducted with regard to a functional testing of those ovals. And, we also provided some documentation from SysTest that supports our position that there is no negative impact on the accuracy of a voting position that either a square or an oval in that Dominion system. The option to select the shape of that position is an EMS...it's a function of the EMS. It's a decision that the staff that's programming that is configuring the ballot that makes it the time of that configuration.

DOUGLAS KELLNER: >> It's for the ImageCast, right.

ANNA SVIZZERO: >> Excuse me?

DOUGLAS KELLNER: >> It's just for the image cast there.

ANNA SVIZZERO: >> Right.

TODD VALENTINE: >> Did you have a report that for anybody?

ANNA SVIZZERO: >> I emailed that to you and Bob yesterday. We indicated we would be sharing it with the Board today.

June 22, 2010, NYSBOE Commissioners Meeting

DOUGLAS KELLNER: >> There was a written report that I saw.

EVELYN AQUILA: >> Well, I know when Pat and I were out last year ... Remember Pat they said they preferred the oval constantly in every place we went.

DOUGLAS KELLNER: >> ES&S only allows an oval.

EVELYN AQUILA: >> Right.

DOUGLAS KELLNER: >> And some of the usability tests have indicated that the oval is slightly more useable than the squares. My suggestion is that this not be a County option, that the staff here should confer and just have them do it one way or the other.

>> - -

DOUGLAS KELLNER: >> We shouldn't have some counties using boxes and other counties using ovals.

EVENLYN AQUILA: >> I agree.

DOUGLAS KELLNER: >> And, the fact that ES&S already requires ovals would suggest that maybe it would be better if just everybody used ovals.

I'm not sure why the County should have the option to decide between ovals and boxes.

KIM GALVIN: >> I think the Statue says they can use ovals or boxes.

DOUGLAS KELLNER: >> I don't think it says the counties can choose. It does provide for ovals or boxes.

The language does provide for ovals or boxes as part of the broader framework of what's authorized, but I would just urge that we try to have uniformity and not have people doing it differently.

EVELYN AQUILA: >> And, Kim, if you really believe that one is more useable than the other for the voter, I think we sort of have an obligation to pick the more useable one.

KIM GALVIN: >> I just think that the counties themselves, and maybe I'm wrong, but I think ...

EVELYN AQUILA: >> But we visited the counties. Not all of them by no means, and every place we went last year they said the oval is better. People don't like the square.

June 22, 2010, NYSBOE Commissioners Meeting

KIM GALVIN: >> Although very few counties use the ovals.

EVELYN AQUILA: >> Yeah, well, they didn't have them, many of them. They just had the square but they said they ...

KIM GALVIN: >> I have no problem, but I just think you're going to have some counties that are comfortable with squares or they would say ...

EVELYN AQUILA: >> Unfortunately, I didn't see it in the places that we visited. Because they're the same people who go ... People will fill them in and a lot of them with the square they were outside the square. And whether or not it mattered, they were afraid they wouldn't be counted because they went too far out. And the oval is easier to stay within.

I know it's silly. It's a silly argument but the oval was easier for people to stay within because they're not this big, they're little tiny things. And it was easier to stay. Somehow people thought as they were voting that it was easier to stay within an oval, and we heard it from practically every place we went. And we were all upstate here. We were upstate. We weren't downstate.

GREGORY PETERSON: >> I'm not going to vote unless it's a diamond shape.

DOUGLAS KELLNER: >> All right, I think we've had enough of this discussion.

EVELYN AQUILA: >> Sorry.

Enforcement Determinations

DOUGLAS KELLNER: >> The next matter is Campaign Enforcement Determinations. Does anyone want to have a public discussion of any of the determinations or an Executive Session discussion?

All right.

Then, the motion before us is to approve the determinations as proposed on the Agenda.

Those in favor say aye.

>> Aye.

June 22, 2010, NYSBOE Commissioners Meeting

DOUGLAS KELLNER: >> Opposed? Is there anything we need to do?

JAMES WALSH: >> The next meeting.

DOUGLAS KELLNER: >> The next meeting date. I think we were discussing Tuesday, August 3rd.

And then we still want to have a discussion on Executive Session on campaign finance enforcement issues.

But we've already taken whatever actions we're going to take. So the public portion of the meeting is over,

and we won't be coming back.

And our next meeting then is scheduled for noon on Tuesday, August 3rd.

All right.

Thank you all for coming.

Executive Session

Do I have a motion to go into Executive Session?

GREGORY PETERSON: >> So moved.

DOUGLAS KELLNER: >> Those in favor say aye.

>> Aye.

DOUGLAS KELLNER: >> Opposed?

[END AUDIO]

End.