

# NYSBOE Board Meeting March 3, 2011

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## Table of Contents

1	Board of Canvassers Meeting .....	1
2	a. Certification of General Election Results for the 100th Assembly District. ....	1
3	Board of Commissioners Regular Meeting.....	2
4	Approval of Minutes .....	2
5	Unit Updates.....	2
6	a. Executive.....	2
7	b. Legal.....	8
8	c. Election Operations .....	11
9	d. Public Information.....	15
10	e. Campaign Finance.....	18
11	f. Information Technology.....	23
12	Old Business.....	23
13	a. Carrying Over of Green Party Enrollments. ....	23
14	Executive Session.....	24
15	End .....	25

## Board of Canvassers Meeting

[BEGIN AUDIO]

**DOUGLAS A. KELLNER:** So we begin the meeting of the Board of Canvassers to certify the results of the special, of the general election for the 100th Assembly District. Is there a motion to approve the certification?

**EVENLYN J. AQUILA:** A motion to approve.

**JAMES A. WALSH:** Second.

**DOUGLAS A. KELLNER:** All those in favor say aye.

[CHORUS OF AYES]

**DOUGLAS A. KELLNER:** Opposed? All right so that carries and we will sign the paperwork now. We will certify the election. It's just two sheets of paper, the certification and the canvas?

Congratulations to Assemblyman Kirwan and his landslide victory.

# NYSBOE Board Meeting March 3, 2011

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1 **EVENLYN J. AQUILA:** It took a while. [LAUGH]

2

3 **DOUGLAS A. KELLNER:** All right so that concludes the meeting of the Board of Canvassers.

4

## 5 **Board of Commissioners Regular Meeting**

6

7 **DOUGLAS A. KELLNER:** We will now call to order the Commissioners of the State Board.

8

## 9 **Approval of Minutes**

10

11 **DOUGLAS A. KELLNER:** The first item of business is the approval of the Minutes of December 23rd and January

12

13 19th. Is there a motion to accept the Minutes as presented?

14

15 **JAMES A. WALSH:** So moved.

16

17 **EVENLYN J. AQUILA:** Second.

18

19 **DOUGLAS A. KELLNER:** Those in favor say aye.

20

21 [CHORUS OF AYES]

22

23 **DOUGLAS A. KELLNER:** Opposed, nay?

24

## 25 **Unit Updates**

26

27 **DOUGLAS A. KELLNER:** All right it passes and we'll have the unit updates. We'll start with the co-executive

28

29 directors Robert Brehm and Todd Valentine.

30

## 31 **Executive**

32

33 **ROBERT BREHM:** Some of the interesting items, we participated in the Election Commissioners Winter

34

35 Conference in Rockland County. In addition to the foot of snow that fell during the Conference, they had a nice

36

37 crowd. Todd and I participated in the MOVE Act portion and other people did different sessions and will

38

39 probably cover it in their unit report, but I think the one thing that was universal in the communication was they

40

41 were very satisfied with the vendor we picked and the work that Scytl did in order to help them through because

42

43 every deadline we had was at the last minute, while we extremely busy doing so many other items. And they did

## NYSBOE Board Meeting March 3, 2011

---

1 say that they thought they worked very well together and it was very helpful to their ability to meet those  
2  
3 deadlines and get the work done. So one it was nice to know that the vendor we picked was well received.  
4  
5 You know we continue to have our conference calls with the counties and covered a number of items of interest  
6  
7 to them. There are two main items I think, the Shoe Box program, which from our perspective, you know, having  
8  
9 heard so often that New York is last to do HAVA compliance. There has not been a lot of guidance from the EAC  
10  
11 on how to meet the requirements of spending the extra money once you have certified compliance with Title III  
12  
13 or even how to comply with certified compliance with Title III. We did the phone call Tuesday, February 8th and  
14  
15 had not yet received the guidance from the EAC, but it came later that afternoon, but you know it's many years  
16  
17 after it would have been helpful. But we're reviewing it in order to get the documentation filed and so the  
18  
19 counties can start accessing that additional bit of money. One, they gave us guidelines on how to submit the  
20  
21 documentation, but they still haven't really given us the guidelines that they promised over a year now in the  
22  
23 making of how actually to run the Shoe Box program

24  
25 **TODD VALENTINE:** Right, that's still missing.

26  
27 **ROBERT BREHM:** That's still missing. It would be very helpful to get that as soon as possible.

28  
29 **EVELYN J. AQUILA:** Excuse me Bob, would you explain the Show Box program to people who watch this won't  
30  
31 know what it is.

32  
33 **ROBERT BREHM:** Well the counties know because we've talked with them, but that's a good point. The ones  
34  
35 we've, you know, HAVA requires that we reserve, you know, the money that was available in HAVA to comply  
36  
37 with four major components, replacement of voting systems, statewide voter registration lists, the HAVA  
38  
39 complaint procedure and fail-safe voting through affidavit voting. We always had affidavit voting so that was an  
40  
41 easy one to comply with. It took us until this fall to meet the replacement of those voting systems.

42  
43 So now that we have the guidelines we can review them and make sure we're complete, submit our paperwork  
44

## NYSBOE Board Meeting March 3, 2011

---

1 to HAVA and once that has been completed we can use whatever HAVA funds have not been spent bringing us  
2  
3 into compliance on other items that would further the administration of a federal election. We've been telling  
4  
5 counties to whatever other items that they need to spend money on keep all of their documentation and put it in  
6  
7 a shoe box so that once - -

8  
9 **EVELYN J. AQUILA:** So that's a big shoebox, right? [LAUGH]

10  
11 **ROBERT BREHM:** Well some of them have bigger shoe boxes than others, but once we get the guidelines from  
12  
13 the Federal Election Systems Commission we could then do the best we could to reimburse them for as many  
14  
15 receipts they had in the shoe box assuming the EAC allows us to reimburse them for any of it. So we're not sure  
16  
17 of their guidelines yet. They have not shared them. So we are waiting for that part of it.

18  
19 The other item, they had recommended that we work with a committee that the EAC would put together to help  
20  
21 us to come up with the items that may be impacted by MOVE related to when the primary and the general  
22  
23 election take place. So the ballots can meet the federal 45-day transmission guidelines. So they identified six  
24  
25 commissioners, well five commissioners and Steve Richman from the City of New York and we had that  
26  
27 preliminary phone call yesterday so that was one of the items. There was an action item from the last phone call.

28  
29 And Todd and I participated both in the NASAD Conference. FVAP had a conference as we arrived. I got there I  
30  
31 think for the last 15 minutes. Todd got to participate a little bit more in the FVAP program. We both participated  
32  
33 in the Overseas Vote Foundation Conference on Thursday that was happening in another building nearby. And  
34  
35 that was very well-attended and it was webcast and I know people here commented how fine a job Todd and I  
36  
37 did at our program. [LAUGH] Well if they were thinking otherwise, they hadn't said it yet. [LAUGH]

38  
39 And then Bob Howe and I serve as New York reps on the standards board and that conference was in Oklahoma  
40  
41 City last week. And different things happened, but it wasn't as detail-oriented as I thought the standards board  
42  
43 might have been.  
44

## NYSBOE Board Meeting March 3, 2011

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1 **EVELYN J. AQUILA:** What do you think about standards?  
2

3 **ROBERT BREHM:** And one other item that I thought was of interest, we had a preliminary meeting with  
4  
5 representatives of Commission on Quality of Care and I see Greg Jones is here who participated with other  
6  
7 members of the Commission on Quality of Care. And also representatives from the Catskill Center for  
8  
9 Independence and Center for Independence for the Disabled in New York, CIDNY, helping us as subject matter  
10  
11 experts on implementing the Chapter 505 of the laws of 2010, which require just updating the program we  
12  
13 already have in place for pole site accessibility since the Governor signed the bill that required all poll sites to be  
14  
15 fully accessible in a period of time to transition in the existing sites. So we had that preliminary session and  
16  
17 we're looking forward to their input in a follow up session.  
18

19 **EVELYN J. AQUILA:** Can I ask you what the technical guidelines the Development Committee is, are they  
20  
21 developing guidelines or are they already in place? Are they the ones that are in place or are they bringing in  
22  
23 new ones?  
24

25 **ROBERT BREHM:** They're doing a little of both. There was a report from the committee in this, the National  
26  
27 Institute of Science and Technology where they, it's a group that advises on what the standards should be.  
28  
29 It's made up of both, you know, state, local representatives, you know, technology people as to what the correct  
30  
31 standards would be. Some of the work they are doing are creating standards to evaluate the MOVE Act Wizard  
32  
33 tools that they've come up with. Some of that was a concern that I know we talked about when we were  
34  
35 implementing MOVE, some of the programs they were putting in place had not been certified. So we would not  
36  
37 use all the functionality of the Wizard tool that FVAP made available to us, one because it had not been certified  
38  
39 and we were uncertain of how it would be working.  
40

41 So they do a number of standards of the BBSG reviewing the BBSG. They did make a point to say they're getting  
42  
43 away from the year, you know, the BBSG 2005 and BBSG 2007 because it's too confusing to them and they are so  
44

## NYSBOE Board Meeting March 3, 2011

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1 far past 2007 that they now call the BBSG 2005 BBSG 1, the amendments they're making to that would be 1.1  
2  
3 and then the 2007 they're leading towards a version two. But they still have - -

4  
5 **EVELYN J. AQUILA:** That's a cosmetic change.

6  
7 **ROBERT BREHM:** It's trying to keep track of all the comments, but they did have a comment period on what the  
8  
9 people thought needed to be done to improve the BBSG and they are soon to release that version and have  
10  
11 another round of comments that they hope, you know, towards the Fall filled out.

12  
13 Well it's pretty much the standards as we go forward for perhaps the next generation of machines. One of the  
14  
15 items that was a concern is they are addressing, they're trying, well they're attempting to sing a lot of  
16  
17 accessibility-related to paper based systems, but they standard doesn't seem to be equally worded for non  
18  
19 paper-based systems.

20  
21 So like the Automark would have a different standard than I think you participated in the test we had here with  
22  
23 like the phone-a-vote system as to whether they were looking at a standard that would say now once the voter  
24  
25 marked the ballot using the ballot marking device, they would not be a requirement to handle that paper ballot  
26  
27 before its scanned and it was triggered to the paper world. But the phone-a-vote system creates a paper ballot in  
28  
29 states that use it on Election Day, which still has to be handled by an attendant, by someone, a co-worker in  
30  
31 order to be canvassed. So they clearly in the conversations need to hear from people. You know what is an  
32  
33 appropriate standard and what's the best way to word it? So they have those items out there. They were putting  
34  
35 them out there and hoping people would look at them, read them, think about them and follow up with  
36  
37 comments to them so I think that will be helpful.

38  
39 **JAMES A. WALSH:** You talked about poll site accessibility. How would you characterize where we stand on that?  
40  
41 Are there a lot of places that are not complying with the law? I know you said we have time to straighten that  
42  
43 out. How bad of a problem is it?  
44

## NYSBOE Board Meeting March 3, 2011

---

1 **ROBERT BREHM:** I know Greg or Patrick had the list last. I think most counties have reported to us that they  
2  
3 felt that they completed the surveys. They have reviewed the surveys and either through permanent  
4  
5 improvements or temporary improvements that they have mitigated most of those items. I think New York City  
6  
7 was down to one or two sites, but the language of the bill pretty much says, directs the board to do certain other  
8  
9 tasks and I think most of it is just reviewing what we already have provided. Part of our 2006 settlement with  
10  
11 the court, one of the early items we had to come up with was general guidelines for preparing for the election. A  
12  
13 lot of the items are in that general guideline. So we've given some of those documents to, you know, the technical  
14  
15 group to review and see if we, if you know the things we need to update since 2006.

16  
17 We have the survey that we work with Commission on Quality of Care, the DOJ survey to make sure it was  
18  
19 complying with the New York State Code and they confirmed for us again that it was. So we had the survey  
20  
21 instrument. The only added item I think in the statute requires that those surveys be evaluated by someone who  
22  
23 is, I didn't bring the statute or the language with me, but evaluated by someone familiar with accessibility. When  
24  
25 we set out to program we worked with the Commission on Quality of Care, the Catskill Center and other groups  
26  
27 like Paralyzed Veterans Group and others to encourage the counties to either work with those groups, to do the  
28  
29 surveys, review their plans, come up with a program. Better yet we encourage them to use the monies that were  
30  
31 available to Health and Human Service and HAVA to receive training from those groups on how to do the  
32  
33 surveys yourself and what is required so that if you have vacancies in the future.

34  
35 So we think we have most of the pieces together and it shouldn't be that big a burden on the counties to just pull  
36  
37 together an update and try to get it out to them as soon as possible. But mostly the counties have reported that  
38  
39 they thought they were compliant and if we don't have to change the survey instrument itself, then I think we're  
40  
41 doing pretty well. We'll see, but I don't think it's that big a change for the counties. It just an update to what  
42  
43 we've been doing since 2006.  
44

## NYSBOE Board Meeting March 3, 2011

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1 **JAMES A. WALSH:** Thank you.

2  
3 **EVELYN J. AQUILA:** Thank you.

4  
5 **DOUGLAS A. KELLNER:** Anything else?

6  
7 **TODD VALENTINE:** No, no, I think we're plugging along.

8  
9 **DOUGLAS A. KELLNER:** Greg, did you want to say anything on that subject?

10  
11 **GREG JONES:** I don't really have anything to add other than we're probably trying to improve the checklist

12 provisions of where the BMDs are and how they should be set up, most of the issues involved having them in the  
13 back. Other than that, I don't have anything to add.

14  
15  
16  
17 **DOUGLAS A. KELLNER:** All right then we'll, thank you Greg, we'll turn to the legal report, Kimberly Galvin.

### 18 19 **Legal**

20  
21 **KIMBERLY GALVIN:** Thank you Commissioner. In addition to the written comments that I provided to you, I

22 think there's a couple of things that are worthy of stressing or notation. As you are aware we are currently being

23 monitored by the Department of Justice with regard to our compliance with the MOVE Act as it particularly

24 pertains to our special and general elections. The Governor's program bill No. 4 that he submitted with regard

25 to moving the timetables for the special election passed the Senate this morning and passed the Assembly

26 yesterday. So I would imagine that will be signed into law. It was his bill. So I can't imagine he's going to have a

27 problem with it in time obviously for the vacancy in the 26th Congressional District should he choose to do that.

28  
29 So we've been answering a lot of questions on the implications of that bill not only as it pertains to any

30 Congressional special that may be called, but also with the looming Assembly specials of which there are

31 currently I think possibly two and perhaps a third one that's coming down the pike.

32  
33 So people have a lot of interest in that as well as the discussions both internal, external with the Department of

34 Justice ahead of our April 1st reporting date concerning any progress that the Board has made in effectuating

## NYSBOE Board Meeting March 3, 2011

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1 change regarding the timetables for the elections that are forthcoming to insure the compliance. And we've had  
2  
3 many, many, many conversations with people and the staff itself has developed a series of plans and we're in the  
4  
5 process of merging our recommendations together and we've also talked with the County Commissioner group  
6  
7 on that as well as, you know, people that we know inside and outside the building. So as Paul and I report to the  
8  
9 Department of Justice on April 1st, again I think it's critical that we keep emphasizing the monitoring of it and  
10  
11 making the point that they are watching and we need to do what we need to do in order to try to get some  
12  
13 compliance there.

14  
15 Let's see, other than that, in addition to the written comments, we did work with Campaign Finance Staff and we  
16  
17 put in a regulation, a consensus regulation to reflect the increase in the campaign finance limits that I believe has  
18  
19 been moved to the Secretary of State's Office from Gore.

20  
21 And I too have had, as the agency ethics officer, have had a few conversations with the Public Integrity  
22  
23 Commission, both on insuring compliance with our ethical training for those people that were required to do it  
24  
25 under the Governor's Order as well as in preparation for the financial disclosure filing that we all had to start  
26  
27 thinking about that will come to the forefront very quickly. I am formulating the list now and there are some  
28  
29 new additions and new people and so I will be notifying you as soon as the first time I can with regard to when  
30  
31 that filing is available. May 15th is the deadline so we have plenty of time, but something we all need to be aware  
32  
33 of.

34  
35 **EVELYN J. AQUILA:** Kim, I must be honest with you or maybe I was asleep or something, that's the first time I  
36  
37 heard that is we have to give people ethical training?

38  
39 **KIMBERLY GALVIN:** The Governor's office puts on training through the Commission on Public Integrity and  
40  
41 certain people; certain staff people are required to attend.

42  
43 **EVELYN J. AQUILA:** Oh I see. I completely misunderstood.  
44

## NYSBOE Board Meeting March 3, 2011

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1 **KIMBERLY GALVIN:** No, I'm sorry, so we clarified with the Governor's staff who in this agency needed to go and  
2  
3 by what date.

4  
5 **EVELYN J. AQUILA:** I thought we had to give ethical training. I was going to say when we have, you know, what  
6  
7 can we point to as I being able to train people? Not that we're not ethical people, don't get me wrong.

8  
9 **KIMBERLY GALVIN:** I don't think they want us to be - -

10  
11 **EVELYN J. AQUILA:** I think with like 25 years with the Diocese of Brooklyn I can give some ethical training.

12  
13 [LAUGH]

14  
15 **KIMBERLY GALVIN:** No, but we did that, we were required to put things in our files now, our personnel files  
16  
17 and so it's just, you know, it's obviously as the Governor probably - -

18  
19 **EVELYN J. AQUILA:** Really, you know, and personnel files.

20  
21 **KIMBERLY GALVIN:** Yeah, attesting to the training, the certification.

22  
23 **EVELYN J. AQUILA:** Oh okay, if you had the training. I thought maybe on your ethical positions on certain  
24  
25 things.

26  
27 **KIMBERLY GALVIN:** They are, they do seem to be a lot more active in that department recently so they, you  
28  
29 know, it's good. So we're doing whatever we need to do on that front. That's just something that a lot of people  
30  
31 aren't aware of.

32  
33 **EVELYN J. AQUILA:** It's not the training that's in question; it's the applying of the training that's the question.

34  
35 [LAUGH]

36  
37 **KIMBERLY GALVIN:** That is certainly true.

38  
39 **EVELYN J. AQUILA:** Right. I went to college with a lot of people who took ethics.

40  
41 **KIMBERLY GALVIN:** And since we are at the Board of Election, and we have sort of a unique atmosphere here,  
42  
43 it makes it an interesting line, but I think we're all doing all right.  
44

## NYSBOE Board Meeting March 3, 2011

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1 **EVELYN J. AQUILA:** It's important. I'm not saying it's unimportant you know. I just thought how they were  
2  
3 going to, I thought if we had to give the training how were we going to work that out? I misunderstood. All right,  
4  
5 thank you.

6  
7 **DOUGLAS A. KELLNER:** Kim, at our last meeting with talked about changing the reporting period on HAVA  
8  
9 compliance. Have there been discussions on that?

10  
11 **KIMBERLY GALVIN:** You know there were discussions. I drafted a letter. I talked with Paul obviously and Jeff  
12  
13 Devoran and Brian Heffernan and we just haven't filed it. It is drafted, but I'll do that this week to the court.

14  
15 **DOUGLAS A. KELLNER:** Anything else Paul?

16  
17 **PAUL COLLINS:** The motions to dismiss the Nassau County case have been scheduled for March 18th, the return  
18  
19 date of the motions to dismiss. The court may or may not take oral argument on that day or at all. Other than  
20  
21 that, that's - -

22  
23 **DOUGLAS A. KELLNER:** Okay thank you very much. We'll turn to election operations, Anna Svizzero.

### Election Operations

24  
25  
26  
27 **ANNA SVIZZERO:** Thank you Commissioner. Aside from our written report, we don't have too much to add. I  
28  
29 can let you know that we are still expecting source code findings from ES&S's software submissions. Those are  
30  
31 being reviewed by WYLE. Those are being tested by WYLE and they'll be submitted to SysTest. That has not  
32  
33 happened yet, but we're expecting that to happen at some point during this month. We've made it clear that the  
34  
35 end of March is a hard deadline for us. Dominion understands that deadline as well and we've confirmed with  
36  
37 them that their software will be delivered by the end of the month for all of those issues. We will then do the  
38  
39 same thing, have software source code reviewed. We intend to do all the functional testing here at the State  
40  
41 Board for a number of reasons. So our staff right now is putting those test plans together. We will use some of  
42  
43 the test cases from the original certification. We will be building those elections and producing ballots so that we  
44

## NYSBOE Board Meeting March 3, 2011

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1 can conduct that functional testing here. It's more expedient. It's more cost-effective and I think that we'll get a  
2  
3 quality product in the process. We have not heard about a central count system from ES&S although Dominion  
4  
5 continues to assert that they will be delivering one to us again by the end of March. So we're expecting  
6  
7 certification efforts on both of those fronts shortly thereafter. I don't think anything in addition to report on that  
8  
9 score, but I'm happy to answer any questions you have.

10  
11 **DOUGLAS A. KELLNER:** Anna, we had this separate item for election operations to update on ballot redesign  
12  
13 and usability.

14  
15 **ANNA SVIZZERO:** I will defer to John and Phil Jorzac from our unit, are the two designees with those  
16  
17 responsibilities now, so.

18  
19 **JOSEPH BURNS:** We've been communicating with a few different usability experts to look at potential training  
20  
21 and/or workshops for the staff here and I think we're up to three that we've gotten estimates from at this point,  
22  
23 with one of those three had stated that they could get us additional experts to talk to about training. And the  
24  
25 weeks ahead will be hopefully trying to line up one or another as a potential trainer for the staff.

26  
27 **DOUGLAS A. KELLNER:** And so do I understand now that Phil Jorzac really has been assigned the responsibility  
28  
29 to be the Board's usability officer or the liaison with the county boards on usability issues? Is that a done deal  
30  
31 now?

32  
33 **JOSEPH BURNS:** I guess I'd say he's been working on it. [LAUGH] I don't want to speak where I shouldn't speak  
34  
35 or give somebody a designation I shouldn't give them, but - -

36  
37 **DOUGLAS A. KELLNER:** Well I've been railing away for the last four or five meetings about the need for  
38  
39 somebody to be designated with that job responsibility.

40  
41 **ANNA SVIZZERO:** We designated Joe and Phil to do those two things, but Phil has been reaching out to the  
42  
43 entities gathering information and that kind of thing. So Phil is going to be our staff level go-to guy, but we did  
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## NYSBOE Board Meeting March 3, 2011

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1 want two people to have that responsibility so that if one was ever out or, you know, they look at things from  
2  
3 two different perspectives, then certainly all the nuances would be absorbed by both people and we have more  
4  
5 than one resource at the State Board. Having one person here that knows that thing is never good for us. We  
6  
7 need that to be two people so, but Phil is clear on his mission as I'm sure Joe is. I will speak to that point of your  
8  
9 conversation.

10  
11 **DOUGLAS A. KELLNER:** That's good. I'm glad this is moving along and I also appreciated that you distributed  
12  
13 the ballot formats that you'd collected. You collected a couple hundred ballots from around the country and  
14  
15 having all those examples was very helpful to look at that to compare what other jurisdictions are doing. And  
16  
17 then on certification issues election operations is also working up this year's modifications. Anna, you want to  
18  
19 just talk about exactly what the state of that project is now and what the projected timeline is.

20  
21 **ANNA SVIZZERO:** We do have two lists of functional changes that would be reflected in the software that's  
22  
23 being looked at right now on the ES&S side and that will be looked at in the Dominion package that's being  
24  
25 delivered. We had talked about sending maybe an inquiry to the county boards. I don't want to inundate them  
26  
27 with all of the technical information provided to us, but perhaps ask the county boards outside the issues  
28  
29 relating to ballot, font size and the lines, width between contest, etc., that we asked them for, to give us a list of  
30  
31 any additional functionality or some other feature that they would find helpful in that system. And at least we  
32  
33 could have a working document moving forward so we can send that information that request out through the  
34  
35 election ops e-mail box.

36  
37 New York City has submitted a rather lengthy list of system requirements that they have, but we do have a  
38  
39 change management process that requires that we review them and the minimal ones we approve and major  
40  
41 ones you would approve as a board. So we have reminded ES&S that there is a change management in process  
42  
43 and will acknowledge receipt of the list from New York City and explain that change management process to  
44

## NYSBOE Board Meeting March 3, 2011

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1 them as well and we can share that rather lengthy list with you if you like. We're happy to do that.

2  
3 **DOUGLAS A. KELLNER:** I think that there are people who would be interested in that. Anna, on the list of  
4  
5 modifications that we've been talking about, we're talking about how the canvas reports are printed out for  
6  
7 ES&S.

8  
9 **ANNA SVIZZERO:** The election result tapes, yes.

10  
11 **DOUGLAS A. KELLNER:** And then we're also talking for both systems to develop a more usable system for  
12  
13 accessing the ballot images and perhaps printing out all of the ballot images so that they could be distributed.

14  
15 **ANNA SVIZZERO:** We have had that conversation with Dominion initially and we will be having that  
16  
17 conversation with the ES&S. We haven't had that chance to do that, but that is on our list, yes.

18  
19 **DOUGLAS A. KELLNER:** And then you are also talking to the vendors about changing the voter notification  
20  
21 screens for over votes, right?

22  
23 **ANNA SVIZZERO:** Yes, that is part of the conversation related to that litigation.

24  
25 **DOUGLAS A. KELLNER:** All right, and what's the schedule now for finalizing; I assume we want to do this in one  
26  
27 list so that this is one project that can be certified at once? And what's the schedule?

28  
29 **ANNA SVIZZERO:** We can assume that much. I think from that regard we had some time and cost estimates  
30  
31 from the vendors related to the direct screens that were provided, but without a definitive answer as to what  
32  
33 they have to do that work and that clock won't start ticking until that point in time and today is March 3rd so - -

34  
35 **DOUGLAS A. KELLNER:** So we need to get that done and then to finalize what these other modifications are  
36  
37 going to be.

38  
39 **ANNA SVIZZERO:** Yes.

40  
41 **DOUGLAS A. KELLNER:** And could I suggest that that really needs to be done with budget estimates by our next  
42  
43 meeting in mid April?  
44

## NYSBOE Board Meeting March 3, 2011

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1 **ANNA SVIZZERO:** Very good.

2

3 **DOUGLAS A. KELLNER:** And that the commissioners should have a budget presented to them and then the  
4  
5 choice of what modifications we want to move forward with by that time? Because I'm concerned that if we  
6  
7 don't get it done by then we're never gonna be able to finish it in time for this year's elections.

8

9 Okay, so we move to Public Information, John Conklin.

10

### 11 **Public Information**

12

13 **JOHN CONKLIN:** Good afternoon commissioners. I just have two things to add to the written report now that  
14  
15 you've certified the results for the 100th Assembly District. We've posted those to the web site this morning.

16

17 Also the NVRA units completed site visits this week to Hamilton, Clinton, Franklin and St. Lawrence Counties.

18

19 That was Patrick and Greg in our unit and Tarry Breads was part of that as well, separately. As far as I know that

20

21 went very well, but we will review those visits and if there's any changes that need to be implemented they will

22

23 be taken care of. Do you have anything to add Patrick?

24

25 **PATRICK CAMPION:** No.

26

27 **JOHN CONKLIN:** So that's it.

28

29 **EVELYN J. AQUILA:** Could I ask you a question? You met with the Center for Independence for Disabled People.

30

31 Now was there anything that you learned there that is particularly egregious that's happening at the polls that

32

33 was brought up? You know anything that we really should know about?

34

35 **JOHN CONKLIN:** Well at the same meeting that Bob was at, that he mentioned in his unit report, I personally

36

37 was not there because I'd been out on medical leave for a few weeks.

38

39 **EVELYN J. AQUILA:** Oh you weren't there. Oh okay.

40

41 **JOHN CONKLIN:** So, but Bob was there, Greg Jones was there, and I think that either one of them could answer.

42

43 **EVELYN J. AQUILA:** I would like to hear what might have been presented to us as - -

44

## NYSBOE Board Meeting March 3, 2011

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1 **JOHN CONKLIN:** Oh I'm sorry, and Tom Connolly was there as well. I'm sorry. I couldn't remember if that was  
2  
3 before or after you started. So my deputy would be happy to answer any questions for you. [LAUGH]  
4

5 **EVELYN J. AQUILA:** He just came on the job. I don't want you to ignore any problems that might be out there for  
6  
7 the handicapped. I think we have to address them as well as everything else. Whoever wants to speak?  
8

9 **DOUGLAS A. KELLNER:** Greg, what are the most significant issues with respect to disability access that need to  
10  
11 be addressed at this point?  
12

13 **GREG JONES:** New York City has its own peculiar - -  
14

15 **EVELYN J. AQUILA:** Greg, could you speak a little louder?  
16

17 **GREG JONES:** New York City has its own peculiar problems, which I think is everybody is aware of. I can tell you  
18  
19 this, we finished the vote survey that we'd given and I can tell you that statewide the biggest number of good to  
20  
21 excellent ratings was in the poll site accessibility category so I think that's really a feather in the cap not only  
22  
23 with the State Board, but the local boards have done a very good job. Obviously there are some problems that  
24  
25 exist at particular poll sites, which we are going to try to address with the training that we're doing and with the  
26  
27 survey that we're going to modify a little bit. But I think that we're going to be in good shape, even on their own  
28  
29 survey. CIDNY by the way, if you want to look at, they do have their survey on-line. And there were some  
30  
31 particular issues at particular locations, but by and large there's been great improvement.  
32

33 **ROBERT BREHM:** One of the items that CIDNY mentioned that they thought would be helpful, you know, the  
34  
35 county boards train the inspectors early on. They do the surveys early on, but there are nuances that happen  
36  
37 after they got the building and selected it and by the time it's Election Day. So they recommended and Greg  
38  
39 mentioned earlier recommending an Election Day checklist of the kind of things just to make sure, a reminder so  
40  
41 that somebody has and we put in our training that we, the manual and the SOE training that we've come up with  
42  
43 and things to look at on election day to (1) if it's something that's a problem, alert the board, but (2) if it's a  
44

## NYSBOE Board Meeting March 3, 2011

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1 minor item, you know, try and find a way. If somebody puts something in the way, in the path from the door to  
2  
3 the poling site, you can get the custodian to move it or you can deal with it before it turns into, you know,  
4  
5 somebody being injured. So they had recommended a checklist and we said certainly we'd be happy to look at  
6  
7 something and maybe incorporate it in the plan if it made a lot of sense.

8  
9 **GREG JONES:** We were going to add a section for the poll workers themselves probably as a last defense as Bob  
10  
11 is pointing out to obstacles that might have been placed from the time it might have been surveyed and when it's  
12  
13 not used as a poll site. And so the last line of defense is the poll workers coming in in the morning perhaps to  
14  
15 move the garbage can that's blocking the hall or whatever it might be. So there will be a component in that  
16  
17 survey checklist to deal with those issues also.

18  
19 **EVELYN J. AQUILA:** One of the things I noticed in going around with Bob and I guess cause I have arthritis in  
20  
21 one of my knees I noticed it now, but the handicapped entrance sometimes is twice as far from the poling place  
22  
23 than anything else and it's a long walk to get to and then it's a long walk once you're inside, but I don't know  
24  
25 since the buildings were built at the turn of the century, I don't know if anything can be done about that.

26  
27 **GREG JONES:** We still have to deal with a lot of old building issues. Obviously New York State in particular - -

28  
29 **EVELYN J. AQUILA:** Well especially I'm in Brooklyn - -

30  
31 **GREG JONES:** I think, even, I'm sorry I didn't mean to interrupt you.

32  
33 **EVELYN J. AQUILA:** We were in Brooklyn and Queens that day mostly you know.

34  
35 **GREG JONES:** Well most of the complaints in that regard really dealt with signage and not knowing where the  
36  
37 accessible entrance was if it wasn't in front of the building. There were some comments about that and not  
38  
39 knowing where - -

40  
41 **EVELYN J. AQUILA:** You had to go look for it, that's true, that's true. I saw that too.

42  
43 **GREG JONES:** And that's going to be one of the elements on the survey.

## NYSBOE Board Meeting March 3, 2011

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1 **EVELYN J. AQUILA:** I just want to put it out in the open in case you will start to think about it.

2

3 **GREG JONES:** Thank you. I appreciate your concern.

4

5 **EVELYN J. AQUILA:** You're welcome.

6

7 **JOHN CONKLIN:** Thanks Greg.

8

9 **DOUGLAS A. KELLNER:** Thank you. Elizabeth Hogan for Campaign Finance.

10

### 11 Campaign Finance

12

13 **ELIZABETH HOGAN:** Thanks commissioner. Good afternoon, I submitted pretty much the unit report in the

14

15 same format that I usually do so that I can just plug in the continuing kind of information that you can have at

16

17 your disposal relative to what we're doing in Campaign Finance.

18

19 There are a couple of issues that I just did want to highlight. One of them you'll notice in the report the high

20

21 number of non-filers in the January periodic, There were over 5,500 filers who didn't file and that some type of

22

23 action had to be taken relative to and that included the statutory requirement that we mail a number of letters to

24

25 candidates and treasurers and we subsequently did create an order to show cause to go forward in the lawsuit

26

27 and the numbers were down certainly significantly 'cause a lot of people filed, but that whole process to get the

28

29 numbers down to, you know, 300, what was it 300?

30

31 **WILLIAM MCCANN:** 530.

32

33 **ELIZABETH HOGAN:** It was 530 who actually were on the order to show cause. I just wanted you to be aware of

34

35 those kind of numbers and, you know, with the budget considerations that we always have, I want you to be

36

37 aware that we're suing for the January periodic and those numbers, you know, what it will cost and our estimate

38

39 is it costs upwards of \$25,000 to sue for that non filing. So I just wanted you to be aware of that place in the

40

41 budgetary issues.

42

43 As Kim mentioned, the four-year recalculation of campaign finance contribution limits that appears in 6214 of

44

## NYSBOE Board Meeting March 3, 2011

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1 our regs was due for February 1st. I was out of the office for a few weeks and Kim picked up the ball and, you  
2  
3 know, proceeded with getting that reg done. I appreciate it very much and as she said it is at the Department of  
4  
5 State. So it's a consensus reg we expect there to be no public comment on it as the comment would only relate to  
6  
7 the manner in which we calculated and we used the CPI published by the government. So we expect that that  
8  
9 will be routine.

10  
11 The other thing that I wanted to point out because it's been a concern especially raised by you Commissioner  
12  
13 Kellner is the issue with the software. I wanted to make you aware that, you know, we've been made aware by IT  
14  
15 that the software that we're working on in response I think specifically a number of years ago the usability for  
16  
17 Mac computer users to make it compliant. I wanted you to be aware when we learned it of the implication of the  
18  
19 use of these mobile devices like iPads and the inability to use those kind of devices when people are giving up  
20  
21 traditional computers, even laptops. The inability to use those mobile devices because they don't use software,  
22  
23 they use applications, the ability to use those for filing and with the number of people using those kind of devices  
24  
25 instead of computers. They are not accessible, or filing is not able to be done on those things and those things  
26  
27 would require web- based filing. I just want to bring it to your attention as soon as we were aware of it.  
28

29 **DOUGLAS A. KELLNER:** And so what are we doing to address it?

30  
31 **WILLIAM MCCANN:** Well I can tell you that we've been working on the software and the work that we're doing  
32  
33 there is not for naught. It is being very productive. We've also been told by IT that the software that they're  
34  
35 developing can be adapted for web-based application. Where the rubber meets the road, so to speak, is that  
36  
37 there's a significant hardware and software implication because when you're looking at eleven plus thousand  
38  
39 filers (a) the data form and (b) to have the software capability to allow 11,000 people to all show up on the same  
40  
41 day because they need to make their filing, that is a significant thing. So I think, I was talking with Bob and Todd,  
42  
43 we clearly need to develop a true sense of it. Well how much does that cost? We know tangentially. We know, in  
44

## NYSBOE Board Meeting March 3, 2011

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1 speaking about it, we know - - and George has made no secret about it that there is a significant cost that would  
2  
3 be associated with the data form and the software plus staffing concerns. But clearly to have something that is  
4  
5 current, as current as you can be because software by its very nature, the minute you come out it's already out of  
6  
7 the date in some fashion. But clearly the software that we're developing now which is updated to what we have  
8  
9 in the system is not the direction we need to go, but there is a cost that needs to come from that, so.

10  
11 **ELIZABETH HOGAN:** And we have asked for a number of years for funding to do an assessment of what it  
12  
13 would take to implement a web based filing system and again we put a figure in this year's budget for money to  
14  
15 proceed with the kind of analysis. So there are several issues, budgetary issues. One is the initial analysis of  
16  
17 "What do we need?" And the second issue would be a procurement to provide the implementation of that. So it's  
18  
19 going to cost some money to do it, but it's really, you know, we find ourselves in a really difficult spot because,  
20  
21 you know, we're, as Bill said the software update is not for naught because Mac users, computer users would  
22  
23 still, that will address their inability to file.

24  
25 And also the design of the software is such that it makes filing easier and more common sense and it also makes  
26  
27 it easier from our perspective in assessing the filings, but it does not address this issue of the web based filing,  
28  
29 which I think is going to get more and more significant as more and more people use these mobile devices to the  
30  
31 exclusion of old computers.

32  
33 **DOUGLAS A. KELLNER:** Well I appreciate the report and that you're working on it and that, you know, we have  
34  
35 put the proposals for consideration in the budget and obviously others will make the decision on the budget.  
36  
37 But at least we have laid out what needs to be done so that the Governor and the Legislature can decide whether  
38  
39 this is important enough for them to devote their resources to it.

40  
41 **EVELYN J. AQUILA:** I think we absolutely should, but could I ask you one question? Do you have any idea what  
42  
43 percentage of people are filing that way - using iPads?  
44

## NYSBOE Board Meeting March 3, 2011

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1 **ELIZABETH HOGAN:** Well nobody is filing in that way because we don't - -

2

3 **EVELYN J. AQUILA:** But there is a - -

4

5 **ELIZABETH HOGAN:** Well we don't have a web-based system so nobody can use it. They must use either a

6

7 desktop or a laptop computer because they need to use our software. They need to actually - -

8

9 **EVELYN J. AQUILA:** But they have to use our own, but they would prefer to use other - -

10

11 **ELIZABETH HOGAN:** Yes, because it's easier to file on the web and that's the direction that we're going

12

13 technologically.

14

15 **DOUGLAS A. KELLNER:** Right now you have to have Microsoft Windows.

16

17 **EVELYN J. AQUILA:** All my grandchildren have their iPads. I understand exactly what you mean.

18

19 **ROBERT BREHM:** It's hard to stay current with technology because the iPad 2 came out yesterday, but the iPad

20

21 came out not that long ago and people considering keeping the most current technological item they suggest that

22

23 the iPad 3 will be out by Christmas. So it's very difficult for government to keep up with the latest technology.

24

25 Our hope is to finish this project to bring it to the last or it's not even the last, it's the Mac technology because so

26

27 many users use that. And if we stop to pick up every new one, I mean there's two issues. Finish what we're doing

28

29 as quickly as we can and then there's the whole issue of whether people outside the building, the Legislature,

30

31 advocacy groups calling for changes to reform campaign finance, whatever may or may not happen, we know we

32

33 had a system that was designed in 1990s and needs a lot of work to be accessible to a lot of people. And you

34

35 know it has to compete with funds that just doesn't seem to be around right now.

36

37 So whatever they decide our responsibilities will be, we continue to identify in many of our conversations with

38

39 groups and legislative leaders and budget people that this is something that we need to find some money in

40

41 order to (1) research what it's not doing and how best to come up with a system that will do what it needs to do

42

43 and then that's just the research phase and then the implementation money. So those are two items that I don't

44

## NYSBOE Board Meeting March 3, 2011

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1 think we have a big chance of right now getting because there is no money, but we've identified that repeatedly.

2  
3 **EVELYN J. AQUILA:** My other son has something that's about this big. He got it for his birthday last month and  
4  
5 he can move anything and I don't know what information he has on there, but it is unbelievable. What time a  
6  
7 certain person that you know the King of France - -, he's got it. It's beyond the iPad. It's the next thing, do you  
8  
9 know what they call it?

10  
11 **ROBERT BREHM:** Android or iPhone.

12  
13 **KIMBERLY GALVIN:** iPhones.

14  
15 **ELIZABETH HOGAN:** The other thing - -

16  
17 **EVELYN J. AQUILA:** He can do anything with it. It's unbelievable.

18  
19 **ELIZABETH HOGAN:** Aside from the web-based issue which goes to the use of the mobile devices and things  
20  
21 like that, aside from that, there was the issue that came up that was really rather frightening and luckily got  
22  
23 resolved, was that apparently Apple, our software is written in Java. Now I am no tech person, but it's written in  
24  
25 this Java, which is this language, whatever. But the issue that came up was that Apple was going to stop  
26  
27 supporting Java and therefore if that had happened and it was averted at the last minute by I guess Steve Jobs  
28  
29 signed some kind of an agreement that they would for now continue to support Java. But if they don't, that's  
30  
31 going to wipe out all of the Mac users then.

32  
33 **WILLIAM MCCANN:** The fundamental issue is and the hand held devices as a convenience method, the web-  
34  
35 based application applies to any computer. As long as you have access to the Internet, you have access to web-  
36  
37 based applications. And here's the thing. When we have the software fully developed and the implementation is  
38  
39 really where, from our standpoint, is now you have to implement it, you have to educate filers on what the  
40  
41 differences are, there's an actual cost to field place the software, but it's the public perception at the end of the  
42  
43 day the state of New York will come out with something that isn't even remotely current, but it's going to be out  
44

# NYSBOE Board Meeting March 3, 2011

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1 of date and it will just be another example of the State doing something. Well gee that's great, you might as well  
2  
3 just keep what you have now if you're really not moving the ball down the field all that much more from a  
4  
5 practical standpoint.

6  
7 **DOUGLAS A. KELLNER:** No you're moving the ball down the field all right? Right now you have a system that  
8  
9 can only be accessed through Microsoft Windows. You're almost finished with a system that will expand the  
10  
11 number of users who can access it significantly. Finish that. You've put in the request for the budget to do the  
12  
13 next step and that's a decision that's above our pay grade so - -

14  
15 **WILLIAM MCCANN:** Well there's no question that it will be beneficial. But I'm just saying that it's still right  
16  
17 where people are going to say well great,

18  
19 **DOUGLAS A. KELLNER:** We recognize the limitations, but we're doing what we can to move forward and they  
20  
21 key thing is the priority within the agency to keep the old system functioning even though it's being held  
22  
23 together with chewing gum and spit. And the fact is that with all those limitations and with the very substantial  
24  
25 decrease in personnel you've kept the system working so that the public can at least get access to the  
26  
27 information that is filed. All right next is information technology.

## 28 29 Information Technology

30  
31 **DOUGLAS A. KELLNER:** George Stanton is out sick today, but we do have his written report and I think we've  
32  
33 already discussed the main issues with his unit anyway.

## 34 35 Old Business

36  
37 **DOUGLAS A. KELLNER:** You could put it either under information technology or under old business. We had the  
38  
39 issue of carrying over the green party enrollments. Is that now resolved that we've come to consensus on this?

40  
41 **TODD VALENTINE:** Yes, it's been resolved. I mean it's not finished obviously because it's in process. Our delay  
42  
43 was, part of the delay at this point is just getting a contractor on board to make the correct changes so we can do

## NYSBOE Board Meeting March 3, 2011

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1 the batch updates and then, you know, we have a draft to send out to the counties that we put together to notify  
2 them. Obviously we approve the voter registration form. So that's now in place. The translations are being done.

3 **DOUGLAS A. KELLNER:** I just want to confirm then that the commissioners have made this policy decision that  
4  
5 persons who were registered as not enrolled in any party but who had listed as Green as their preference will be  
6  
7 automatically updated to be enrolled in the Green Party and I guess you had talked about sending them a notice  
8  
9 that that change was going to take place.

10  
11 **TODD VALENTINE:** Basically we have an obligation. That's part of a normal process anyway. The slight wrinkle  
12  
13 would be done because of their status.

14  
15 **DOUGLAS A. KELLNER:** I just wanted to confirm that all the commissioners were on board with it.

16  
17 **EVELYN J. AQUILA:** Yes, I think we said that at our last meeting.

18  
19 **DOUGLAS A. KELLNER:** All right and I don't think there's any new business.

20  
21 **TODD VALENTINE:** Not right now.

22  
23 **DOUGLAS A. KELLNER:** We had discussed having our next meeting for April 12, 2011. We said that last time.

24  
25 So that's Tuesday, April 12th and I have one short item for executive session on pending litigation. So I'll move  
26  
27 that we go into executive session to discuss pending litigation.

28  
29 **JAMES A. WALSH:** Second.

30  
31 **DOUGLAS A. KELLNER:** Is that okay commissioner Aquila?

32  
33 **EVELYN J. AQUILA:** I believe Easter is - -

34  
35 **ROBERT BREHM:** Easter is the 24th.

36  
37 **EVELYN J. AQUILA:** The 24th, good, good, good.

38  
39 **DOUGLAS A. KELLNER:** So are we going to go into executive session?

40  
41 **EVELYN J. AQUILA:** Yes.

## NYSBOE Board Meeting March 3, 2011

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1 **DOUGLAS A. KELLNER:** All right, thank you.

2

3 [BREAK FOR EXECUTIVE SESSION]

4

5 [END AUDIO]