JAMES WALSH: Morning everyone, my name is Jim Walsh and I'm going to be conducting our meeting this morning.

I'd like to introduce my fellow commissioners. On my right-

DOUGLAS KELLNER: Douglas Kellner.

EVELYN AQUILA: Evelyn Aquila.

JAMES WALSH: And on my left.

GREGORY PETERSON: Gregory Peterson.

JAMES WALSH: Thank you, all. We'll go around the room, please.

Starting with Todd, we'll introduce ourselves.

>> Todd Valentine.

>> Kimberly Galvin.

>> Paul Collins.

>> Joe Burns.

>> Anna Svizzero.

>> Pat Campion.

>> Bob Brehm.

>> Bill McCann.

>> Liz Hogan.

>> Stan Zalen.

>> (INAUDIBLE)

>> John Conklin, New York State Board.

JAMES WALSH: Thank you. Before we commence the approval of our minutes, Commissioner Kellner would like to make some comments, please.

DOUGLAS KELLNER: Thank you, Commissioner Walsh. I wanted to note the passing this weekend of Richard Johnson.

He was the president of Open Source Voting and a dedicated computer scientist who was committed to the concept of improving transparency in voting.

He spent countless hours, mostly uncompensated, trying to work to create open source software for voting applications.

He certainly has made a tremendous contribution to the voting community and society as a whole.

We're sad to note his passing but we congratulate his substantial contributions that he's made for us.

EVELYN AQUILA: I would just like to offer my condolences too. He was a great, active New Yorker and a person of great character.

And he would call me up many a time and keep me on the phone telling me what I needed to do and his information was often very valuable so to his family and his children and his friends, my deepest and saddest condolences.

JAMES WALSH: On behalf of the Commissioners and myself we'd like to add our condolences also and that this would be in the record of our minutes of the New York State Board of Elections. Thank you, Commissioner.

DOUGLAS KELLNER: Thank you.

JAMES WALSH: The minutes of the March 10th and March 25th are in your agenda.

Everyone has had the opportunity to review them. If there are any additions, deletions or corrections please make them.

Otherwise we'll accept a motion to pass them.

DOUGLAS KELLNER: I move the adoption of the minutes as drafted.

JAMES WALSH: Second?

GREGORY PETERSON: Second.

JAMES WALSH: All in favor?

ALL MEMBERS: Aye.

JAMES WALSH: Opposed? Carried.

Unit Updates:

Executive Unit:

Unit updates. Co-Executives, Stanley Zalen, Todd Valentine.

STANLEY ZALEN: The internal controls system project is moving forward nicely.

We're on step four now and we've asked the unit heads to respond within the next couple of weeks.

Shortly after that, by the end of the month, we'll have to submit our internal controls system to the controller's office.

Todd?

TODD VALENTINE: We've been - Obviously we conducted the special election last week, the county boards did.

And that's been well reported in the media. That continues.

Kim and Paul can report specifically what the -- is doing, but they've been in the process of re-canvassing the voting machines and they'll begin a canvas of the absentee ballots tomorrow.

Related to that - well - unrelated to that the next focus is on responding to the Department of Justice request to have our own self-imposed plan for 2009 to respond to the delays in certification and our potential jeopardizing the current court order... dealing with that.

That's for an item later in the agenda.

Budget-wise you may have noticed that the state Legislature has adopted the 2009-2010 budget.

There was a significant reduction in the entire agency's budget based on the last year's analysis. Pat Tracey shared with Stanley and I, I don't know if he passed it on but it's about $1.9 million down from the prior year's budget a lot of that is taken up with positions that have not been filled.

And other expenditures we proposed in the midyear proposals last year.

We're also anticipating today things being issued with regards to the staff reductions that the Governor had hinted at or stated before the budget was adopted.

We haven't seen it yet so I'm not quite sure how it impacts us given the fairly substantial number of open jobs that were not filled with this agency.

Or basically were prevented from filling so I'm not sure if it will call for any reduction in that related to that the Governor issued an order last week that was sent out to Stanley and I did get a copy.

We're sending the raises that were due for the management confidential, the unrepresented management confidential people in the agency, which is a fairly large portion of our employees.

So that is -- we haven't quite calculated the reduction of that.

I don't know what the number of that is because it just came out so it's still something we're working on.

At that point there's an item that worked on the agenda for some other issue which we'll discuss when we get to that point.

But right now in the grand scheme, we're kind of holding our own.

We're still here.

There's no maneuver to eliminate the agency.

And we've made cuts in every part of the agency at either small or large to various units and that will continue through this year.

You know our goal has always been since we're an agency built upon people and it's a service we provide, it's you know getting the staff to multi-task and continuing to do more with less stuff.

We don't really -- we're not an agency of a lot of stuff like the Department of Transportation has.

We don't have a large infrastructure of non-personnel expenditures.

Our biggest expense is our people.

But it's the service we provide to the community of the campaign financial exposure the candidates on the other side of the aisle and the other major exposures we do so that's always been the focus of this agency and will continue as we move forward through that and analyze the different --we also been rumored is another mid-year budget cut in addition to the budget cut there now another one on top of this I'm not sure how it's going to pan out.

It's not all doom and gloom.

It's not a rosy picture, either.

>>EVELYN AQUILLA: Our agency is also available to all of the counties in the state.

And Boards of elections.

>>TODD VALENTINE: We'll still hold the election that hasn't got reduced in any way in fact it expanded in particular in campaign finances.

>>DOUGLAS KELLER: But Todd is it fair to say the bottom line is we are actually cutting bone is it fair to say?

That it has meant that campaign finance in particular because campaign finance is the largest part of the agency is unable to really do everything that the public and the statutes want us to do in terms of enforcement.

And I certainly agree with their priority that the main priority is to keep the filing system working.

And to concentrate on voluntary compliance by making it as simple as possible for people to file.

But that it means that the budget cuts have -- well and I like your comment on it.

That there are functions that we would like to do that we're unable to do because we don't have the resources now.

>>TODD VALENTINE: Particularly in campaign finance that's true.

But we're not adverse to spending money in that area.

I mean to increase the efficiency of that agency we've authorized and budget approved a fairly substantial expenditure in scanning and digitizing the records to make them more accessible to the staff so they can continue with that job.

We've continued to expand our work on the platform neutral filing system.

So we're using those resources.

But you're right.

Clearly in the area where we have the most discretion is as I call it the prosecutorial discretion where there are people who are deficient in their filings to be polite that we're really unable to have the staff necessary to do the research to have those cases.

To the level that we would like to do and that clearly was envisioned when the Legislature passed the expansion of the campaign finance area three years ago now.

We've just been unable to do that.

GREGORY PETERSON: Isn't that basically because in spite of the fact that we have requested through personnel and this Board approved personnel and this was something that was expected because it was necessary that it's been cut out plain and simple we said here and went back to the Legislature you've asked us to do such-and-such we asked the Legislature here is what we want to do bottom line is they cut our funds and no you can't hire.

TODD VALENTINE: That's true.

>>GREGORY PETERSON: It's relatively simple it's just we put the shoe on the right foot as far as this agency is concerned as to how it can perform at a peak. We have been ham strung and that's not something we have too much to say about.

EVELYN AQUILLA: Well said.

TODD VALENTINE: Yeah.

JAMES WALSH: Thank you Stanley and Todd.

Legal Unit:

Legal, Kim Galvin?

KIM GALVIN: Excuse me if I overlap with some of the things that you did at the last meeting.

It's kind of all blurred together.

The 20th Congressional District race has taken a lot of time for Paul and I and everyone in the building particularly with answering the papers, monitoring the County's questions.

There are ten counties.

Everybody reads everything differently from you know the impound orders to the orders to whatever.

So it takes a lot of work.

As Todd indicated, the most recent order indicates that they will begin counting the paper tomorrow.

Hopefully it will be a sooner than later result.

But I wouldn't be so certain of that.

In addition to that I don't know if the conference with judge sharp occurred after the last time that you've met but we went to Federal court and had the conference transcript which is posted to the web regarding the current status of the lot 1 machine deployment which I think we'll talk about more in executive session as Todd indicated we've had a lot of discussions with the vendors and the testing labs trying to see what sort of proposal we could put together for this fall.

In addition, we had a lot of conversation with the other arm -- another arm of the Department of Justice regarding the consent order that was entered into in the 20th Congress District which has come into play with the counting and the timing of the counting of the military ballots in that race.

We have also a great deal of increased activity has occurred in the Cyber case.

That's really ramping up.

And it's become quite busy.

I don't know how much to discuss with that here in open.

Either it's --

DOUGLAS KELLER: Well you can just summarize what the case is about.

KIM GALVIN: For those of you who don't know Cyber was our previous testing lab.

And they've sued us.

And it's going -- it's at the deposition stage.

DOUGLAS KELLER: We didn't pay that -- we had only paid them a small amount of -- on the claim that they had for fees.

KIM GALVIN: Yeah they are claiming we owe them $1.8 million more.

EVELYN AQUILLA: I think just to make that -- to clarify that, it's not -- they are not suing us because we -- the only thing they didn't do what they needed to do for us and we stopped payment when they lost their certification, we stopped payment.

So I gather they are suing us because they want us even though they did lose certification they want -- they say we still owe them that money.

Is that --

KIM GALVIN: That's one gist of it, yes.

EVELYN AQUILLA: I just wanted to say that.

It's not like --

KIM GALVIN: There are two -- there are two clearly sides.

EVELYN AQUILLA: I don't want people to think we fired Cyber or Cyber didn't conform with duties.

They lost their certification.

Well, we did let them go.

It wasn't really firing them.

They lost their certification.

>> PAUL COLLINS: Commissioner, and there are other issues beyond that as to the quality of the work they were performing that are best discussed in executive session.

All right?

There are a number -- there are a myriad of issues in that litigation.

>>EVELYN AQUILLA: That was the major one, wasn't it?

>>KIM GALVIN: Yes that was one of the major ones, yes that's correct.

>>EVELYN AQUILLA: I was only referring to the major issue.

>>KIM GALVIN: So those three things have kept us busy in addition to the many, many calls that we've received regarding you know almost everything.

But any specific questions Paul and I can address in executive session or when we come back out we can put more on the record if you would like us to.

>>JAMES WALSH: Thank you, election operations, Anna.

>>DOUGLAS KELLER: Before we -- I think this is best time for me to just comment again on my old issue that I keep raising after virtually every election.

Which are the court orders that alter provisions of the election law.

Sort of on consent of the election lawyers without involving our agency.

And the exparte order with respect to the 20th Congressional District I thought was a very substantial abuse of judicial discretion.

Through no fault of the judge.

Because none of these things were disclosed to the judge in the exparte application.

But the exparte order explicitly overrode four sections of the election law.

And I don't believe the judge even realized when he was signing the order that he was overriding specific election procedures that were set forth in the statute.

To be clear there, the four things that were done by this order, one was that he enjoined the counting of emergency ballots notwithstanding the provision of the election law that requires that emergency ballots be canvassed by the inspectors after the close of the polls.

Second, he overrode the provision that provides that the inspectors canvas absentee ballots in those counties which have not adopted a resolution providing for central scanning.

Which resolution has to be adopted I believe 60 days before the election.

Third is that he overrode the schedule of the re-canvas and canvas for those counties that had already promulgated their schedules in accordance with the election law.

And the fourth, which I don't necessarily dispute the intent of it.

But he overrode the state statute which says that poll watchers have to reside in their county of residence.

And I'll say with respect to that claim that the petitioner at least made a -- at least disclosed that fact to the court.

And made a constitutional argument that that provision was unconstitutional.

But the -- and there is -- it's also ironic that there's legislation pending in both the Senate and the assembly to change that provision to remove the restriction on poll watchers.

And most of the Republicans in the Senate voted against that provision just two weeks ago while running into court last week arguing that it was unconstitutional.

But I don't want to make this a partisan issue now which is why I'm not proposing a resolution today.

In a month I'm going to come in with this resolution.

1
2 Because I've been doing this after every election.
3
4 That we as an agency should not get into a partisan deadlock because election lawyers
5 from either one of our parties go into court to get this kind of court order.
6
7 That we should be defending the uniform application of the election law.
8
9 And it's our job to make sure that the court at least knows when it's overriding these
10 statutory procedures that it is in fact overriding these statutory procedures.
11
12 And it doesn't matter whether it's the Democrats or the Republicans that go into court, we
13 as an agency should be opposing this.
14
15 And I've been saying this since the day I got -- since I've been Commissioner.
16
17 So it's not directed to this particular race.
18
19 And I know that if I brought a motion today, it would be interpreted as some partisan
20 issue.
21
22 And I don't want it to get into a partisan issue.
23
24 So after this is over I'm going to come in with a formal motion to try to work out a
25 scheme so that we can agree in advance on how the agency is going to do -- deal with
26 these kinds of issues.
27
28 And do it in advance without a partisan tinge to what we're doing so that the procedure is
29 already in place.
30
31 And we can do this so that we can protect the uniformity of the application of the election
32 law I might add to judge Brand's credit that the order that he did yesterday was flawless
33 in my view.
34
35 That after hearing both sides that he's gone back to the system of saying: Well, this is
36 what the election law says.
37
38 Let's apply the election law.
39
40 And I know that's also the letter that counsel submitted on a bipartisan basis to the Court
41 on the agency was to say we're not going to get involved in the litigation.
42
43 But we do ask that the court apply the election law in making its rulings.
44
45 So that's a start.
46

But I didn't want it to go you know -- I'm going to become a nuisance on this because we really do need to address this so we don't get caught in a partisan deadlock because we're tied up in the issue of the moment.

And frankly it will bind me, as well.

So that if Democratic lawyer comes in and tries to do this, I will have the ability to say.

Look, we already have an agency policy.

I can't help you on this.

We have to apply the election law the way it's written and see that the ballots are counted the way the Legislature set the scheme up.

>>GREGORY PETERSON: Without getting into a lengthy discussion any judge that makes a decision on any matter has the law before them and has the whole staff so it's not a question of the judge sitting there being totally ignorant of what the election law is.

It's a question of how he wants to apply it.

And what you're saying is we should go in as a friend of the Court so to speak and explain to him which I think is kind of overstepping our bonds and within our judicial system.

>>DOUGLAS KELLER: Commissioner with all due respect --

>>GREGORY PETERSON: We can argue that at the time.

>>DOUGLAS KELLER: Do you think Judge Brands knew that there was a statute that you have to canvass the emergency ballots at the site?

>>GREGORY PETERSON: He has a law secretary that I assume has read the law and suggests to the Judge as to how he applies it.

>>DOUGLAS KELLER: I think it's a generous assumption.

>>KIM GALVIN: Just for the purposes for the people in the room that may not know it we were served with the order.

We didn't participate in the drafting we had no notice to be heard.

This wasn't something that anyone acquiesced to or there was no position taken exparte.

We were served with the order and I don't know as we move forward we should discuss how to insert ourself into a process we would have no notice of.

>>DOUGLAS KELLER: I would like to do that.

And to spend some time on it.

Because I really think that we do need to get a bipartisan agreement.

And we need to do it without the heat of a partisan case where one party has already gone into court.

And so obviously the Commissioners from that party are going to be reluctant to challenge it unless we've already worked these things out in advance.

But I feel very strongly that canvassing emergency ballots at the poll site is an important transparency and verification issue.

And that -- and that the reason the law says that is because once you move the ballots, you now have a chain of custody issue.

And so that there -- it's an important procedural device that's in the law.

And that we should continue to remind our county election Commissioners that that is in the law and it's a requirement and that they have to comply with it.

And we should educate the courts when that issue comes up as to why that's in the law.

And that it's an important verification and protection.

>>JAMES WALSH: All right.

Thank you.

Points are very well made I think we've seen a preview of discussions to come on a very important subject.

Well done.

Anna?

Election Operations Unit:

>>ANNA SVIZZERO: Thank you, Commissioner.

With regard to the 20th clearly we've been gathering information that we share with the press office and with others relating to the machine re-canvasses such as they are.

And continuing to get updates on how many paper ballots have been returned to County Board so people kind of know what the horizon is starting to look like.

Through Election Day we continued to field questions from the public.

No particular issues of note other than a lot of people called asking why the polling places were closed.

Clearly they were in the right media market but not Congressional District so that was the most popular question on the 31st.

Our status meetings with regard to voting equipment our status meetings with NYS tech continue and with SysTest the vendor conference calls continue the vendors are on notice that all changes software systems whatever it is they want to submit for this final effort has to be in Colorado at Systest no later than April 30th.

We're moving forward the next day with whatever materials they've provided.

And whichever direction that takes us.

We worked in the unit on a framework for the 2009 rollout that's to be presented to justice and discussed in your executive session.

We have worked on a draft to the EAC on how we will be using the restored $49 million of lever replacement money which is also in your packet or was provided to you at some point.

I'm not quite sure when or how.

So that's also a draft for you.

We do have a resolution today.

We are in need of replenishing HAVA dollars to the account that pays for the generic work related to the certification testing.

That resolution is in an amount of $150,000.

We've been coming back to you periodically rather than take more money out of that account than we need.

We have conducted the first in a series of EMS training sessions with County Boards. We had two counties and yesterday we had one today.

29 counties in total have booked appointments with us so we'll be doing these all month right through the early part of May.

At first blush it's going well.

I think we've calmed the fears of some of the smaller counties in that this is a task they can assume and do so with a high level of confidence.

So we'll continue to work through those sessions and tweak them as we go forward.

We have worked on draft procedures with the team from NYS tech so we can have those drafts at our April conference.

We have participated in the HAVA Task Force meeting which was held here just on Friday.

That Task Force is charged with reviewing the update to our HAVA implementation plan that's being submitted to the EAC.

The co-directors have reached out to New York City to -- we provided a list of information that we're looking for for the paper ballot election that was conducted on Staten Island so we can review that and perhaps come up with some better best practices and try to present those at our conference in April, as well.

So we're waiting to get some feedback from the city on that list of items that we had asked for.

Other than that, it's work as usual in election operations.

We are able to answer questions that you may have.

>>JAMES WALSH: Commissioner Keller.

>>DOUGLAS KELLER: Anna, have we received the final certification for the November general election from New York City yet?

>>ANNA SVIZZERO: I don't believe so.

I think we've exchanged some information with Joe Larocha from the city Board but I think we were waiting for some more documents so I don't think we have that for you today.

>>DOUGLAS KELLER: I would like to put that on the to do list.

Because in the back of my mind I'm just concerned about history that the -- that people go to print with the final numbers on the Presidential Election and we still haven't communicated our final numbers to Washington yet.

>>ANNA SVIZZERO: I will check with that and with the staff downstairs.

I know we said we would put the changes up on the web site and then bring back the documents for you to resign here at the Board.

And I just don't have those here.

So I'll check to make sure we have everything we need from the city.

>>DOUGLAS KELLER: I'm concerned we notify the national archives and the people who keep these records in Congress so that they will be correct as they are printed into the history books.

>>ANNA SVIZZERO: We'll make sure that happens when we get back downstairs.

Thank you.

>>JAMES WALSH: Any other questions for Anna?

Thank you, Anna.

>>ANNA SVIZZERO: Thank you.

>>JAMES WALSH: NVRA public information.

John Conklin.

Public Information Office / Voter Registration Unit:

>>JOHN CONKLIN: Good afternoon, Commissioners.

The public information office like some of the other units have already mentioned has been very heavily involved in the issues around the 20th Congressional District but before that we also were answering a lot of questions on the Village elections which were only three weeks ago.

It seems like a long time ago but we also have fielded a lot of stuff on the hearing panel and we did the sun wall petitions the extension of the deadline for military and overseas ballots and the all result in the 20th which has changed every single day since Election Day.

Elections operations has been working hand and glove with public information to maximize the amount of information we make available to the public each day.

In an effort to give the public and the media one consistent source of information.

On Friday we started to post a daily update on the web site.

Which provides A), a bottom line number of two candidates head to head, and B) a breakout of the results in each county by party line, C) a breakout of the absentee ballots outstanding in each county by party enrollment and, D) a breakout of all overall absentee ballots by military and overseas totals.

The state Board of Elections conference is a mere three weeks away.

We continue to attempt to finalize the agenda for the conference.

We're still moving around a few things to accommodate our guest speakers and members of the State Legislature.

So far we have more than 200 County Commissioners and deputy Commissioners planning on attending in addition we have 19 vendors scheduled to attend so we're looking forward to an excellent three days.

Related to the conference Bob Brehm, Patrick Campion and I visited the studio of the SUNY satellite network to discuss the guest speakers from the New York State broadcasters association and the presentation of the New York network for the PSAs that they are going to do this summer for the potential voting machines that may be used this year we also have a conference call with the New York City Board to discuss the extension of the SOE poll worker training and voter outreach contracts and addressing New York City's unique needs as related to SOE after a thorough discussion the New York City Board is following up with SOE and they both have a better understanding of each other's needs.

As Anna mentioned the HAVA Task Force met on Friday.

Bob Brehm and Greg Fiozo from our unit participated in that Task Force meeting.

Bob and I had a conference call with Laura Smith and Aaron from the judicial campaign ethics center to discuss how the state Board can assist them in reaching out to candidates for their judicial qualification conference.

Training seminar for judicial candidates and invitations to candidates to participate in their voter guide for this fall.

We will be adding materials for the County Commissioners concerning judicial campaign ethics training requirements for judge candidates for the annual conference.

The units will also been working with the Council's office to fulfill a request by the Governor's Office of Regulatory Reform and the Governor apparently that we provide all of our publicly used forms in one central location on our web site.

This is for the convenience of the public.

And so they can monitor the use and availability of these forms.

Lastly the organ donor language for the voter registration form came back from the Department of Health this week.

The changes requested by DOH have been incorporated into a draft which is circulating around the agency for comment right now.

It's been suggested that a wholesale revision of the form with the assistance of usability expert is needed.

That is being discussed, as well.

Other than that, the routine operations of the unit with NVRA and NYS voter, anything you want to add, Bob.

>>BOB BREHM: We did hear from GORR since your last meeting and other two regulations that many of us in the building are working on.

And they have accepted all of our edits to their documents and they were happy with the -- well they have at least given us a number and now it's in their hands.

So we have to wait for them to accept and give us a letter of acceptance before it can go to the Department of State.

>>JAMES WALSH: Any questions?

Thank you, John for that.

Campaign finance, Liz Hogan?

Campaign Finance / Enforcement Unit:

>>LIZ HOGAN: Thanks, Commissioner.

The springtime is a very busy time of year in campaign finance especially.

And we've been working to finalize a number of projects.

I have mentioned at the last meeting that we were finishing up the new draft of the 2009 filer handbook.

I'm happy to say that's gone to the printer.

We've actually reviewed the proof.

And we will be having the new handbook returned to us in time for us to take to our conference for distribution.

The new forms that we've created well actually it's not new forms it's updating forms that are in existence already that's been finalized.

Those forms are on the web.

And they've gone to the printer so that we have them for distribution.

The seminar schedule, which is the big training program of the year for us and happens in May and June, has been finalized.

This year we're providing 26 seminars.

What we've been working on in addition to getting that finalized scheduled coordinated with the counties is an -- if I just -- let me just stop and say that registration for those seminars is available on the web.

So if anyone who is -- has a chance to see this meeting would like to attend, they can register with us on our web.

We've worked on reviving the seminar presentation so that -- revising the presentation so it's in sync and consistent to the changes we've made to the filer handbook and the forms we've created.

We've -- as Anna said on Friday a meeting of the HAVA state plan Task Force was held here at the Board.

We -- and also participated in that relative to HAVA administrative complaint process that we are mandated to address.

The scanning project I mentioned at the last meeting had begun.

We had a little glitch.

But the first 37 boxes of documents mostly have been scanned.

So we're on track.

Regarding the reg, Bill can address that after I finish making just a couple of points because I know that's been an issue for several of the Commissioners and there is an update to provide you.

1 We met internally with IT; George isn't here, to give a report.
2
3 But we met to -- with the burden, the work burden that IT has had relative to HAVA and
4 the database.
5
6 We kind of got away from the routine meetings that we were having with them relative to
7 issues in campaign finance.
8
9 So we've reinstituted those routine meetings.
10
11 We've gotten a dialogue going as to who will have responsibility in IT that we can deal
12 directly with on certain issues and vice versa.
13
14 We've met with the New York State dispute resolution group who is our alternative
15 dispute resolution provider pursuant to the mandate of HAVA.
16
17 And our own state law.
18
19 We are -- we met with them just last week to finalize both sides of a presentation that we
20 are giving on the 21st of April.
21
22 We're providing a seminar training on dispute resolution aspect of the HAVA complaint
23 process.
24
25 It's going to be an all-day training session.
26
27 And we've created -- we had to sit down and create a presentation, a slide presentation.
28
29 And written things to distribute to them.
30
31 So that's been done.
32
33 We finalized that.
34
35 We're looking forward to a successful training session on the 21st.
36
37 I think -- we are also meeting one other thing that we have set up for this week is on
38 Thursday.
39
40 I guess that's -- is that -- on Thursday we're meeting with NYS tech to make some
41 updates to the HAVA administrative complaint procedure flow charts that we worked for
42 months to create which basically takes the mandates of the HAVA and the state law as
43 well as our regs and puts it in a workable chart form so that the application of processing
44 administrative complaints will be done consistently and timely.
45
46 And so we're going to make some updates to that this week.

I think that's what we've done since the last meeting.

I want -- Bill, if you want to talk about the reg and anything that you want to add.

>> Sure as the Commissioners know there's a proposed regulation that the Board approved concerning the issue of duplicate filings for local filers who also filed at the state Board we have an ongoing dialogue with Gore.

I just received this morning an e-mail back with red line edits that GORR is suggesting to our SAPA documents, the documents that go to support the regulations.

They said they were generally happy with what we gave them but they just had a couple of nuances they would like to develop I haven't seen them yet but I told them we would take a look at them today or tomorrow and our hope is to get them taken care of this week we.

So we are still in line our goal is to have a presentation at our seminar to discuss with the counties what modifications this will bring.

And then to get it published.

And our goal is to still have the -- have it go into play for the July periodic filing.

We're still on track for that.

That was our goal.

I think we should be able to meet it.

Assuming there's no unforeseen circumstance that occurs.

I don't anticipate any big problem.

>>JAMES WALSH: Questions?

>>DOUGLAS KELLER: Liz and Bill, I want to congratulate you for how much you have accomplished in light of the budget cuts.

And obviously you had a comprehensive agenda there that you've done.

But at the last meeting you indicated that the corporate excess contributions report would be -- was ready.

And I thought we were going to get that today.

Can you tell us what's happened?

>>LIZ HOGAN: Sure.

The staff reports to counsel was finished as I had said at the last meeting.

The reason that it's not on the agenda today, there are the two.

The 2006 and the 2007.

The reason it's not on the agenda today was that there were on both of those reports from staff there were a couple of issues that needed to be reworked and needed for them to address.

So we sent it back to the staff.

There were I think -- I believe there were three outstanding issues that needed to be taken care of.

One of them is completely resolved and the other two are close to being resolved.

That's why those aren't on today.

They just needed other staff work.

If they had been fully complete and we could have signed off on it we would have put them on for this agenda.

>>DOUGLAS KELLER: The other one was I thought we were going to get a whole slew of additional recommendations to close off complaint files.

>>LIZ HOGAN: We didn't have a chance to do any more than is on for today.

>>DOUGLAS KELLER: I guess I ask it only to illustrate that the budget cuts have consequences.

Because I know that you and your people have done a tremendous amount and have gotten much more done with less.

But that you know we do care about these things.

And --

>> BILL McCANN: Again I think there are a lot of positives at play for instance we had very good reason to believe that for instance the 2008 over contributions of corporations will be accomplished this year.

When 2009 hits we'll be right up to speed on all of those.

Also with the various election samples --

>>DOUGLAS KELLER: You are on tape.

>>LIZ HOGAN: It's true.

>> BILL McCANN: I feel confident saying that.

So I will say with the advent of the additional staff that we were able to get, they did a terrific job.

Where in the past Liz and I would have to basically be in every single thing that happens we now staff that we have weekly meetings that they conduct with audit and review, education outreach and training and processing so we are seeing some benefits.

But again obviously not to the full extent that we would like.

But we are cognizant of the Commissioners concerns we have taken it to heart and doing the best we can and we'll continue to drive down the pile and see what we can do.

>> LIZ HOGAN: One of the benefits that has come, which makes Bill and I both confident in saying that as soon as the -- as soon as the January periodic filing issues have been taken care of we can start the '08 over contribution corporate is -- and it presented -- this problem presented itself in looking at the '06 and '07 that we have on the table right now, in '06 we were dependent on the material that we received for review from getting that in kind of a mishmash kind of way from IT.

And it wasn't -- I'm not saying it was an IT issue.

It was that there was no process in place for how to get this information.

So we spent a lot of time going back and forth with what kind of parameters, how do we put it in we're not getting the right thing out.

And that was for the '06.

And when we started doing the '07 what we had done is our own people have created really they did a terrific job because they created a -- somewhat of a relational spreadsheet which enabled them to capture themselves issues of corporate over contributions.

And in a way it's relational.

Because it allows while looking at a number of reporting data by different committees, it allows all of that stuff to be looked at relative to a particular corporation.

And you know for example if you have five corporations reporting basically about the same contributor, corporate contributor but they report by different name.

For example, X corporation and the next committee says X and Y corporation Inc. but it's the same corporation, there are all these things that enter into play and that's why it's all relational.

So for the '07 they were able to create this and incorporate it and frankly it's going to be used and it will be very effective in looking at the '08.

That's why we're confident in saying, you know, as soon as we get the data available to us because of the timeframe we'll put that into you know this system into play and I have no issues with the fact that that will be a timely report.

>> BILL McCANN: Frankly once the staff has now institutional knowledge that they didn't have before.

It's different staff.

They are not -- they have a process in place in how they do it.

So again, we're making very good progress on the number of items.

>>LIZ HOGAN: Uh-huh.

>>EVELYN AQUILLA: May I say I'm very impressed.

It's been substantial progress.

Both of you should be very proud of yourself and the staff.

And I congratulate you.

>>JAMES WALSH: We'll third and fourth that.

Keep up the good work.

>>TODD VALENTINE: I just had one question on the handbook.

Do you have a time for posting that on the web?

>>LIZ HOGAN: A version went to the printer but it's available to be posted to the web.

>>BILL McCANN: They had one minor change --

>>LIZ HOGAN: I think it went to ITS.

>>TODD VALENTINE: There have been questions asked that's all.

>>LIZ HOGAN: If it's not up there already.

It should be posted.

>>TODD VALENTINE: I don't look at the web site every day.

>>BILL McCANN: We made one modification on the proof and they made that change.

It was yesterday.

So we should be all set.

>>TODD VALENTINE: Excellent.

>>JAMES WALSH: Thank you any further questions.

ITU in George Stanton's absence Todd Valentine has graciously volunteered to give a mini report.

Information Technology Unit:

>>TODD VALENTINE: George is on vacation I forgot that and have somebody else come up but Liz addressed the issues that they had been working on with him and I really don't know if there's any questions it's the usually day-to-day functioning.

There's always some problem with the database that they spent several hours last night working on.

>>DOUGLAS KELLER: Any news on New York City and NYS Voter?

>>EVELYN AQUILLA: I was going to ask the same thing.

>>TODD VALENTINE: That I'm going to ask Bill and Bob because they have been working specifically on that.

No news.

>>BOB BREHM: Last meeting last week we asked the question.

And they are still working on approving their response to our question.

So we have not heard from New York City.

>>JAMES WALSH: Excellent job, Todd.

(Laughter).

>>EVELYN AQUILLA: Real in-depth report.

>>JAMES WALSH: George would be very proud of that report.

Is there any old business to address?

If not, we'll move to new business.

New Business:

Item A, vote on resolution to shift HAVA related staff funds from State funds to Federal funds.

>>PAT TRACEY: At this time I would like to request we hold that over to the next meeting. The division of budget has been receiving a budget bulletin and they will be providing is us with a target of personal service savings and that will also enable us time to identify additional savings for the agency for the next fiscal year or this fiscal year.

>>JAMES WALSH: Any objection.

>>DOUGLAS KELLER: No.

>>EVELYN AQUILLA: No.

>>JAMES WALSH: Item B vote on resolution to increase State Board voting machine examination account.

Anna and Joe Burns.

>>ANNA SVIZZERO: A copy of your resolution is in your packet we're looking for an incremental deposit in the amount of $150,000.

>>DOUGLAS KELLER: I move adoption of the resolution.

>>GREGORY PETERSON: Second.

>>JAMES WALSH: All in favor.

(Chorus of ayes.)

>>JAMES WALSH: Opposed?

Thank you.

Item C, vote to approve required 60 day plan for the extension of Federal lever replacement funds.

Anna?

>>ANNA SVIZZERO: I think everybody has a draft.

I think those were distributed either by e-mail or this morning.

I don't know what the Board's pleasure is with regard to this.

I spoke to the EAC.

No one has submitted any report yet so we didn't have a model to follow.

They thought short and sweet was good.

They weren't looking for a very elaborate report.

I don't know that they really knew what they were looking for.

They did indicate we're the biggest players.

So probably the states with just a little bit of lever replacement money were looking to see what we provide to the EAC.

So we did have a draft that's circulated amongst the staff and I know a couple of people have commented on it.

>>DOUGLAS KELLER: I saw Todd's comments that he made yesterday.

And I thought that they were good.

That I think that the -- to the extent that we can help tell the story of what we've already accomplished, that that's a positive addition.

Now, my suggestion would be that the Commissioners authorize the co-executive directors to submit the plan. . .when they are comfortable that it's ready.

>>TODD VALENTINE: It's due May 9th, by the way.

>>DOUGLAS KELLER: Right.

>>TODD VALENTINE: So we have --

>>DOUGLAS KELLER: So I'll make that motion.

>>GREGORY PETERSON: Second.

>>JAMES WALSH: All in favor, aye.

(Chorus of ayes.)

>>JAMES WALSH: Opposed?

Carried.

Thank you.

>>ANNA SVIZZERO: Thank you.

>>JAMES WALSH: Item D discussion of the proposed plan for voting machines for 2009.

Anna and Joe.

>>ANNA SVIZZERO: Again, you have a draft.

Our proposal is that we share with justice the concept of doing pilot projects that we conduct some additional functional testing here.

At the State Board.

We have an aggressive acceptance testing plan.

To fully test the scanners that we develop a protocol for the County Boards to upgrade the units that they've purchased which are currently on the Sequoia dominion side to turn those into full scanner BMD units so we would have to develop a protocol for the counties to do that upgrade and then do an additional hash checking or other security procedures to ensure they have the correct software and is functioning appropriately and report back to us because we don't have the staff and funds to go around the state and funds to review.

So that's the basis of the letter but I think the nuances of it I don't know that you want to discuss it.

>>DOUGLAS KELLER: Anna --

>>PAUL COLLINS: Commissioner Keller pardon me for interrupting you. It's probably a subject that is best discussed in executive session because it involves a response to pending litigation. Now that Anna has laid out the frame.

>>DOUGLAS KELLER: I still have a framework questions before we get into the thing but I think it's a good reminder for the Commissioners that we shouldn't be talking about our alternatives now.

But there are certain issues I think the public is interested in that we should at least get the factual background of where we stand right now before we -- before we pin down just what our litigation posture would be.

And Anna, what I was going to ask is where we stand now on the timeline.

I don't think that that's a big litigation issue, right, Paul?

I mean we can --

>>PAUL COLLINS: It is what it is.

>>DOUGLAS KELLER: That's why I think we should just --

>>PAUL COLLINS: It's factual, yeah.

>>DOUGLAS KELLER: A lot of people have a lot of questions about this so I think it's helpful if you can go on the record with exactly what is the current schedule with certification testing and rollout.

>>ANNA SVIZZERO: The certification schedule the final reports would be due to the Board in November of '09 so that clearly puts us in dire straits with an '09 rollout.

>>DOUGLAS KELLER: Testing has resumed now, right?

That we have approved test plans.

There are still one or two issues of additional test plans that have not yet been approved.

>>ANNA SVIZZERO: All of the test cases have been delivered to the vendors.

There are no test cases outstanding so now the lab can begin to develop those procedures but they clearly need the new product materials to do that. The development of the procedures is contingent upon the product that's before them at the time to ensure that what was required in the test cases gets tested in a certain manner which we're insisting be fully documented and articulated.

>>DOUGLAS KELLER: By that product --

>>ANNA SVIZZERO: New software, new hardware, new system.

>>DOUGLAS KELLER: The specific system that's being proposed for certification by ES & S for the DS 200 and by Sequoia for the scanner.

>>ANNA SVIZZERO: Yes, sir.

>>DOUGLAS KELLER: So the vendors have not yet submitted the revised documentation.

>>ANNA SVIZZERO: No they have until April 30th to review the test cases, make changes pursuant to those test cases.

Resolve any of the discrepancies that may have still been outstanding from the previous test case efforts.

>>DOUGLAS KELLER: The reason they have April 30th as opposed to right now is -- why don't you just -- I'm trying to get you to illustrate some background.

>>ANNA SVIZZERO: Our hope was the products are ready to roll we don't want to start the fixed break scenario again in April that brought us to this point in time.

These products were supposed to be ready a year and a half ago.

They weren't.

So we're -- we've been working with the vendors to deal with the discrepancies.

They have been using this downtime to bring these systems up to par so it's our hope we have this additional time now that all of the test cases are in their hands clearly the most significant of those was the security testing document that they make all of the changes they need to bring their system up to a level that does indeed put it in a position to proceed through the 2005 EVSG and our standards testing to those standards fully across the board.

Both sets of regulations. So we gave them that period of time to do so.

That put us I think two weeks off of what the Systest timeline was.

They had hoped to start testing again in the middle of April but we moved it so there would be sufficient time to finish the test cases and give them some 30 days to get the systems in their -- up to a final status.

>>DOUGLAS KELLER: Kim, do you have anything you want to add?

>>KIM GALVIN: I agree with Anna.

The whole point of providing the generic test cases to the vendors was so the vendors could look at them and make any adjustments to their systems they needed so when in fact the testing did actually occur they were in the position -- best position possible.

The security test case, the accuracy test case the ones that were just provided to them in keeping with that same format we put in this cushion of time so that when in fact they do make their final drops at the lab on the 30th hopefully that's where they need to be to actually start the actual running of these tests.

But that being said, it hasn't stopped the progress of review for certain things that they have there.

I mean testing, nothing has halted.

That's certainly just a parallel track that's being run at the same time.

>>ANNA SVIZZERO: Both vendors were allowed to submit source codes so that review could begin now in this month of lead time.

So there is work that's ongoing.

Just not straight up.

>>DOUGLAS KELLER: So then what happens in May and June?

So May and June are devoted to the actual testing and completion of those test cases.

>>ANNA SVIZZERO: Completion of those procedures and those actual tests.

>>DOUGLAS KELLER: Then what happens next?

>>ANNA SVIZZERO: We have the public test that will be conducted in Albany part of the functional testing will be done here in a venue that we have yet to select.

>>DOUGLAS KELLER: Do we have a date for that yet?

>>ANNA SVIZZERO: No we needed to know there were final builds for the software for all of the components of the systems before we could schedule that.

We're expecting it to be early in the fall.

I think that's the timeline.

I don't have the timeline in front of me.

>>DOUGLAS KELLER: That's the public usability tests that our regulations require.

>>ANNA SVIZZERO: Yes and then the balance of the time is report writing, and review and submission to the Board for their consideration.

>>DOUGLAS KELLER: And that brings us into November then when we would actually make a final certification decision on the current timeline.

>>ANNA SVIZZERO: Yes.

>>KIM GALVIN: Maybe.

>>DOUGLAS KELLER: Well, what does that mean?

>>ANNA SVIZZERO: Barring any other --

>>KIM GALVIN: I think their reports are due the end of November that would mean they would have to come to us.

We would have to have a meeting and discuss maybe there's some elements that have compensating conditions.

Whether or not we approve those I believe just the last date on the timeline doesn't necessarily clearly depict the last date for all of our discussions that we need to do before they are voted on for certification purposes.

>>ANNA SVIZZERO: We have been talking to NYSTEC about getting reports as tests are completed.

Maybe that helps us out. We talked to Systest about whether the timeline was padded in any way.

It does seem to be lean.

We reviewed it to some degree with NYSTEC so we're continuing some conversations that we're hoping to try to mitigate all of that review even for the Commissioners.

Certainly an end to end report on certification would be a huge document for you to review and absorb in any reasonable period of time.

So if we could perhaps get those reports as those testing phases are completed it might make the review process easier so we're still talking about that option with NYSTEC to see if it has value or is possible.

>>JAMES WALSH: Okay.

I was going to add that was very helpful.

Would it be possible for you to put that in a one page projected hope schedule?

>>ANNA SVIZZERO: Sure. I would be happy to.

>>JAMES WALSH: Please.

>>DOUGLAS KELLER: All right.

And then I guess what we'll talk about in executive session is kind of the nuts and bolts of what we should actually propose to the Department of Justice.

And I guess I don't think I'm stepping out to say that one of the things that we need to talk through is how extensive we would need to have additional safeguards built into our procedures so that there can be pilot projects to use the scanners so that everybody can start to learn the process and doing the switchover in an orderly fashion but at the same time not compromise voting integrity or accuracy or confidence in the count…by using machines that have not been fully certified.

So I think that's what we'll be talking about in executive sessions.

>>JAMES WALSH: Any other discussion before we go into executive session?

Bob?

>>BOB BREHM: We'll just have to let the Webcast people know will we be voting when we come out of executive session.

>>DOUGLAS KELLER: Well, we will have some of the -- I don't know if we finished the agenda yet.

We still have to do the -- well; I think the formal opinion we should do in public session.

And then we may vote on some of the enforcement cases.

But I don't think that there's anything that -- I mean I think we can have the discussion on the draft without disclosing --

>>EVELYN AQUILLA: Yeah, I consent.

>>DOUGLAS KELLER: If that's all right.

Should we go onto that, Item 7 on the agenda?

I had one suggestion about this draft.

First of all, thanks to Liz and Bill for putting the draft together.

And I'm very pleased that we're now considering the formal opinion of the Board after all this time.

To me the core of the opinion is Section 17.142 which is that giving out cards to voters that make the voter's child eligible for a gift redeemable the next day is prohibited by the Election Law.

I think that the fact that inspectors are giving out the card is really irrelevant to the opinion.

So my suggestion would be to delete the second paragraph in its -- I'm sorry; the second paragraph in its entirety.

And then on the first paragraph to just say is the distribution of cards that are designated therein as gift privilege card and so on so we would be deleting the words "by poll workers at poll sites."

Because I don't think that's really relevant.

We're saying the cards are illegal.

Whether or not they are given out by poll workers or whether they are given out by somebody else --

>>EVELYN AQUILLA: Just say by any person.

Anything.

>>JAMES WALSH: I agree.

>>EVELYN AQUILLA: Could I say I had something? I'm not a lawyer so forgive me I just thought if we were going to say is guilty of a felony some cases it may be a felony it might be so terrible.

But I thought some could be an innocent act they look like they would -- I don't judge them.

I don't know what was in their heart but they were saying if you can get your mom and pop --

>>DOUGLAS KELLER: Evelyn they are quoting the statute.

It's a quote.

>>EVELYN AQUILLA: I know but is there any way to suggest to the Legislature that that could be changed to include a fine or misdemeanor or follow knee that's all.

>>DOUGLAS KELLER: Sure but our opinion is just --

>>EVELYN AQUILLA: We have to go with the law but I'm saying can we suggest that.

>>DOUGLAS KELLER: That's a separate issue.

>>EVELYN AQUILLA: Okay.

That bothers me I think a felony will never be put in place against anybody I think it's too harsh they would have to be handing out thousand dollar bills or something.

>>DOUGLAS KELLER: Certainly for this particular one, I don't think anybody is going to jail for giving out an ice cream cone.

But the point -- the point we're making is that right now the state of the law is that you can't give anybody anything.

>>EVELYN AQUILLA: I understand that.

>>DOUGLAS KELLER: For voting.

>>EVELYN AQUILLA: I said can we suggest to the Legislature that we soften that a little by saying a fine, a misdemeanor or a felony?

>>JAMES WALSH: It should be -- that would be in our legislative package.

>>EVELYN AQUILLA: I know but our legislative package won't be ready.

>>GREGORY PETERSON: Yeah until next year.

>>EVELYN AQUILLA: We can't send over an addendum?

>>DOUGLAS KELLER: This is specifically what I'm proposing.

>>JAMES WALSH: By poll workers at poll sites.

>>GREGORY PETERSON: Right.

>>DOUGLAS KELLER: Thank you.

>>GREGORY PETERSON: And then the first paragraph. Okay.

>>DOUGLAS KELLER: Evelyn, this is specifically what --

>>EVELYN AQUILLA: Yes, you are taking that out the whole second paragraph you said, right?

And the two poll workers.

>>LIZ HOGAN: So the designation of where these cards were given is irrelevant to this is what you're saying?

>>DOUGLAS KELLER: That's my view.

And I don't want somebody interpreting it as saying oh your opinion only addresses when poll workers give it out.

>>EVELYN AQUILLA: He wants it to be broader.

>>LIZ HOGAN: Any person.

>>DOUGLAS KELLER: Frankly it's better that you draft it at the -- the big way because it's easier to take it out.

>>BILL McCANN: Just draft it in the modified way because the third issue is the recipients.

But that's a whole separate discussion.

>>DOUGLAS KELLER: I think this is -- this is a good way to address the case that we actually had before us.

Because the DA already indicated he didn't want to prosecute it.

And yet I think it's good that we not overlook it.

That we just alert the public again that this law is still in place.

And that even though they may think they are well meaning, the law does make it a felony to give anyone consideration for voting.

>>EVELYN AQUILLA: Is this just going to the DA.

>>DOUGLAS KELLER: No it will go on our web site as a formal opinion of the Commissioners.

>>JAMES WALSH: Right.

>>DOUGLAS KELLER: All right. So I move it as amended.

>>GREGORY PETERSON: Second.

(Chorus of ayes.)

>>JAMES WALSH: Any question.

All in favor?

(Chorus of ayes.)

>>JAMES WALSH: Carried we will go into executive session for --

>>DOUGLAS KELLER: I propose three items Commissioner.

That we go into executive session to deal with our proposal for the Department of Justice and the HAVA lawsuit.

Two, to review the enforcement cases drafted by counsel.

And three, to discuss a personnel matter.

>>JAMES WALSH: Okay.

Do we have a second?

>>GREGORY PETERSON: Second.

>>JAMES WALSH: All in favor, aye.

(Chorus of ayes.)

>>JAMES WALSH: We will go into executive session.