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JAMES WALSH: Good afternoon, ladies and gentlemen.

Good afternoon I'm Jim Walsh and I have the honor of conducting today's meeting, I'd like to introduce my fellow commissioners to my right please.

DOUGLAS KELLNER: Douglas Kellner.

EVELYN AQUILA: Evelyn Aquila

GREGORY PETERSON: Gregory Peterson.

JAMES WALSH: Around the table.

>> Todd Valentine.

>> Kim Galvin

>> Paul Collins,

>> Anna Svizzero.

>> John Conklin.

>> George Stanton.

>> Bill McCann.

>> Liz Hogan.

>> Bob Brehm.

>> Tarry Breads.

>> Bob Warren, Election Operations.

(off mic).

JAMES WALSH: Thank you, everyone.

I'm going to remind everyone there was an election held in the 38th Assembly District on September 15th, a Special Election. And we're going to convene right now the Board of Canvassers to approve the tally that we have received.

Can I have a motion, please?

DOUGLAS KELLNER: So moved that we approve the statement of canvas that found that Michael G. Miller was elected from the 38th Assembly District.

JAMES WALSH: Second?

GREGORY PETERSON: Second.

JAMES WALSH: All in favor?

[Chorus of Ayes.]

JAMES WALSH: Opposed?

JAMES WALSH: Carried.

DOUGLAS KELLNER: Just two documents and then Todd and Bob sign the certificate.

JAMES WALSH: Gentleman, that concludes the business of the Board of Canvassers, we're now going to the meeting of the regular board of commissioners, the meeting of the State Board of Elections.

Unit Updates

Item number one, unit updates, Co-executive directors Todd Valentine and Bob Brehm.

Executive Unit

BOB BREHM: Everyone looks a little different at this end of the table.

EVELYN AQUILA: Welcome Bob.

BOB BREHM: I'm a little closer to the firing line.

WILLIAM MCCANN: You better learn how to duck.

BOB BREHM: So for those who are watching from home, one of our big issues in the last meeting was to say good bye to our long time colleague Stan, I'm not sure he's watching today but wish him well.

Along the lines of changes at the agency we also will soon see the departure the head of our Administrative Department. Pat Tracy is retiring so that date is coming soon and she has over 39 years of service.

Another individual who predates the modern board of elections comes over from the Secretary of State's office.

So, we wish her every happiness.

We had the voting machine pilot program.

I note there is an item on at agenda that the units we'll be talking about, which is very interesting, very exciting, very challenging, Commissioner Calhoun and I toured several primaries to witness firsthand and talk to the voters about their experiences. At the beginning they seemed like they were going to be nervous but actually when we arrived on the scene on primary day, they seemed very calm and confident that they had good hands-on training.

To give everyone an understanding of the paperwork.

While it was new, they were working through the issues and it was a little later in the day when we actually were at the site where we interacted with voters.

They had the same reaction.

They thought it was going to be different but it was not all that complicated.

It was good to see and hear and watch certainly there were things we could do better.

But it was very successful.

We had a monthly conference call with a county commissioners, a lot of pilot questions were covered.

And also with regard to the pilot program we've been asked by Tom Wilkey from the Federal Elections Assistance Commission to coordinate with them our pilot program monitoring as we lead to the general election.

So we're looking to set up a conference call and how best we can look at they want to look at the prequalification testing that's conducted to prepare the machines to use on election day as well as to come on election day and to look at the various systems.

So we are looking to complete that communication so we can make those arrangements.

We have the special election in the 23rd Congressional district, which is an 11 county area and 8 of those counties are fully participating in the pilot program with optical scan.

One of the counties is partially participating but not in the area of the Congressional district.

So needless to say we have several questions from the counties that we've been responding both with conference calls and with mailings.

And we have another conference call tomorrow just to make sure that we keep those lines of communication open and answer their questions.

Generally you want other good news, we received during the last few weeks the federal requirement money for HAVA, the 2008 money was about $7.4 million.

The 2009 was about $6.5 million.

That's additional requirements money that New York State has received that can be made available both for state purposes and county purposes for implementing the new voting system.

EVELYN AQUILA: May I say something about the New York City board the day of election?

I went to Queens, Brooklyn, and Manhattan, and there were very energized boards there, which I haven't seen in a long time.

That's the best way to describe it.

Many of the inspectors told us they had new training.

They had training, extensive training, on the ballot marking devices and when I saw this both in Kings County, then in Queens County and then in Manhattan, I thought it was worthwhile stopping by the city board and I congratulated them on what I had seen.

A lot of new inspectors and the inspectors seem to be also a lot of Hispanic people who could certainly relate to a lot more of the voters and there are a lot of African Americans and also there were Asians.

So I saw there was some kind of an effort being made and I was very pleased and I went up and I saw Mr. Gonzalez and I saw Marcus what's his last name?

EVERYBODY: Cedarqvist.

EVELYN AQUILA: I told them that and yes, they'd been extending themselves into the counties to do just that and they were pleased that I noticed and they said would I bring that information back to the board so I'm happy.

Seemed the appropriate time to mention it.

JAMES WALSH: Todd?

TODD VALENTINE: Pat is our longest serving employee. We certainly wish her well. She's not here today, burning up vacation time. She's in her office, she's here.

I'm sure she's watching, you know, I've known here, she's been here the entire time I've been here and she's worked her way up through the agency.

I don't know when her first position was she started with.

But you know, she's she is through the last original employee, if you want to call it that, that we have left.

So we certainly wish her well.

You know, she's been here for 39, you think she's only, like, 40, so she started very young.

KIM GALVIN: I was five when she started here.

EVELYN AQUILA: She was wheeled in in the carriage.

TODD VALENTIVE: The other thing Bob and I continue to work on is the development of the 2010-2011 budget.

We're still getting more information we're waiting for from the division of budget because there's anticipation that there will be a recall for additional cuts from all state agencies.

So that remains to be seen, I mean, right now there's no request for reduction at this point.

But that could change things.

Obviously we're still struggling to try to get back to where the legislature had originally put us with regards to the campaign finance unit which is one of our struggles that we continue to deal with but Bob and I have been working on putting that package together for them.

And one item to add under new business that's not there is we have two ballot petition rulings, they're not really petitions, they're two rulings the board has to render decisions on with regards to objections.

They're not one's not an objection.

There's a sheet that you have that summarizes that so that has to be added on to new business.

JAMES WALSH: Thank you.

And Pat Tracy, if you are watching, I'd like to offer my congratulations to you too.

And add that 39 years, you look like you're 39 years old.

So obviously you've had a job with very little stress and survived very well.

[Laughter]

And Todd, if you would, remind me so I don't breeze through this agenda without going back and voting on the subject you said.

TODD VALENTINE: Okay.

JIM WALSH: Legal, Kim Galvin.

Legal Unit

KIM GALVIN: Thank you, Commissioner, I was out for a portion of the time from last meeting to this meeting.

So Paul carried the burden of the unit.

I'm sure he'll have more to add.

The unit has been busy fielding questions. We monitor and participate in the voting machine meetings and testing.

And while SysTest was at building 3 this past week, without stealing Anna's report, we did meet with them to discuss discrepancies they had in their report.

They were lending some confusion to whether or not we were on schedule or not with regard to the timeline.

So we did meet with them to try to get them more in line with more accurate reporting out of SysTest, which I think we've accomplished.

We've also been monitoring an out-of-state contractual issue involving Dominion Voting.

There was an out of state judgment filed against Dominion, filed here in New York, the day after an assignment was made, which had the potential to cause some problems in New York.

We've been monitoring, I think that issue has come to nearly a complete resolution, should be finalized today and I can speak more specifically about the details of their settlement in executive session if anyone has any questions.

But that seems to have worked itself out.

As Bob mentioned, we've had many calls regarding the special election.

The 23rd Congressional district, we participated in the phone calls.

We developed what we feel to be is a positive and workable ballot delivery instruction.

The special because there are two actual elections called for the same day, it lends itself to some confusion in eligibility of voters for either one election or the other.

So we've tried to meet with the counties to make sure they're all operating in the same function with a ballot delivery and checking the eligibility of each and as he said, we had one call, we've given them some written instruction and we're going to do a follow up call on Wednesday.

So we participated in that we've also with regard to the 23rd Congressional district we've also been having some conversations with the Attorney General's office fully anticipating that the Department of Justice as you recall in the 20th Congressional district they were concerned about the ballot turnaround time for the military and overseas voters and we entered into a consent agreement to extend that time.

Since that election occurred, the legislature has enacted what we gave them in turnaround time they've actually put into statute.

We were anticipating because the Department of Justice was inquiring before the election was actually called what our turnaround time would be and since then we've heard nothing from them and we've made I know that Jeff Devorin from the AG's office has made significant inquiries so which they're not responding.

Maybe they realize that we've enacted the back end time and they have no issue or I don't know.

So we're waiting to hear from them.

In essence there is more time for the ballots to go out and be returned than there is on the 20th.

So we did receive a letter from Congress from the elections committee and the House of Representatives.

DOUGLAS KELLNER: The subcommittee, the chair and ranking member from the subcommittee.

KIM GALVIN: Urging us to do what we could to facilitate the military and overseas ballot times which we're of course doing.

EVELYN AQUILA: Kim, you're asking for additional time.

KIM GALVIN: In the letter they were referencing maybe we could do what we did for the 20th, which we already did by law as opposed to entering a consent agreement.

So I think what they're asking for urging us to do we have already accomplished. So we're also

EVELYN AQUILA: How many days was that again?

KIM GALVIN: I think it was 30.

This will give them 32 or 33.

EVELYN AQUILA: I thought it was 30, yeah.

KIM GALVIN: Ideally they'd like 45 but

EVELYN AQUILA: I know.

I know.

KIM GALVIN: We've also worked with the operations unit to review the paperwork that's been filed for the Supreme Court candidates.

We'll have a vote on some of those issues.

There has also been there's one issue I feel we should raise.

There've been general objections filed in the 5th Judicial District where the specific objections aren't due until tomorrow.

We do not have them yet but should we have them and have something to rule on, which we're not anticipating, it might give cause for all of you to be here again.

Hopefully that won't be the case.

There has been a lawsuit filed that's returnable on Friday as well.

That's all that I have.

I know Paul had other specific things on the agenda if you'd like to add anything now.

PAUL COLLINS: There're a couple items we'll address later in the meeting but lest I forget with respect to the commissioners other than Commissioner Aquila in one of the federal court matters, we received a request for production of documents.

And I need to speak to the three of you about that before the three of you leave, that's all.

EVELYN AQUILA: You already spoke to me.

I got here early.

JIM WALSH: Any questions?

Elections Operations, Anna.

Elections Operations Unit

ANNA SVIZZERO: Thank you, commissioners.

We have prepared the documents mark you signed for the Board of Canvassers meeting so it was nice to do something that wasn't machine related.

We did conduct last week at building 31 component of our run for record certification testing.

We carved out a test case so that it would be done in an open way.

We had members of the CEMAC (Citizens' Elections Modernization Advisory Committee) committee join us.

Some of the staff came out periodically.

I do want to thank our team for working with sys test.

It was a very daunting week.

Joe and I can certainly attest to sometimes mind numbing.

Sometimes it's an incredible process to watch.

It really was.

It can be very frustrating.

We were happy everything worked out the way we hoped.

The systems are functioning exactly the way they should.

The three issues I think we had were all user associated.

They were really related to how the ballots had been programmed.

Not related to how they had been marked.

The ballots that we did mark and produce with the ballot marking devices were all scanned properly.

The results were imported into the two vendors' election management systems without incident.

We even hand counted those ballots to make sure there was actually no doubt in anyone's mind that the systems were performing the way that they should.

That report won't be a separate report to the board T. is part of testing so that will be incorporated into the bulk of the test reports.

We prepared a report for the site visits that were conducted on primary day with relative to the pilot project.

Those you have before you will be sharing those with all of the boards after today's meeting if it needs to be posted to the Web site.

We can make sure that John gets it so that that can happen.

Overall and we can discuss the pilot elsewhere on the agenda, but I think it's important to thank the boards that did step up and embrace this pilot project.

The proof was definitely in the work they put out, the documents they created for voter education and inspector training purposes, and the experiences that our team had on the road really show that, that inspectors were positive and comfortable with what they were doing on election day and the boards that need to step up their training and need to look at this a little bit more of an internal way so that they can see the benefits of that process as well.

We're happy to answer any questions that you have later in the agenda.

We do have acceptance testing that's ongoing at the building 3 site.

Dominion units have been delivered so those are being prioritized to the counties in the pilot program for the general election because some of those are four county projects and they do need the additional scanners.

So those will be acceptance tested this week and hopefully shipped to those counties by the end of the week if not part of the following week.

We continue our status meetings with SysTest and NYSTEC conference calls almost daily.

The certification testing is on track for one of the vendors.

The other vendor is a little bit behind but sys test has developed some increased training schedules that we hope will make up that time so we do believe that we will still have certification vote for you in December.

We are continuing with the regular election support work.

We're not slacking off in that area at all.

A lot of new commissioners; a lot of processes; major election year.

So there were any number of calls we fielded along with counsel's office and I'm sure others in the building.

Our in house escrow process is complete.

We have a storage unit on order.

It should be here next week.

The procedure itself was shared with the vendors, neither made any comment so we're pretty comfortable that we are ready to implement those procedures once that new unit gets here.

We do have interim secure storage in place now so that there isn't any concern that we have this kind of proprietary vendor information in the general domain on our floor.

Other than that we I can't think of anything else we have to report.

JAMES WALSH: Anybody have any further questions?

ANNA SVIZZERO: Thank you.

JIM WALSH: Public information officer, John Conklin.

Public Information / Voter Registration Unit

JOHN CONKLIN: Good afternoon. Like everybody else in the room, due to the Special Election in the 23rd Congressional District, there's been a significant uptick in inquiries and calls in our office.

We've been giving out a lot of information on deadlines and things like that about whom the candidates will be, although we don't know all the candidates yet or who potential candidates are, what the possibility of an independent candidate circulating petitions the work on the voter registration form is continuing.

We received some comments from some different civic and advocacy groups which we're reviewing.

We're waiting for additional feedback from the election commissioners association as well.

We received a quote from the N.Y. Press Service to meet the publication requirement for the two constitutional amendments for the November ballot.

The two including the Spanish language requirement will be approximately $80,000.

I'm trying to get this reduced by dropping some of the papers out of the quote because I think the ones that are included in there have overlap in their catchment areas so we can I think I can get that reduced by as much as $10,000.

So that I believe is in the packet for resolution, we're not going to be voting on that.

That's not necessary because that happens by operation of law.

We don't need to do the resolution.

Other than that...

DOUG KELLNER: John, I had two questions about and comments about the advertising.

One is that I think we're all of the view that the advertising is being done only to meet the legal requirements and that we don't really believe that the advertising serves any function other than the fact that we have to do it and the legislature has not repealed the requirement.

So with New York City, you now have two dailies that are much lower cost than the one in the current bid.

I know that the New York City board has shifted to using "AM New York" or "Metro New York" instead of the bigger dailies in order to substantially cut that cost.

And then on the other side, if we're doing advertising, the Federal Voting Rights Act requires that we publish in Korean and in Chinese as well.

And I didn't see any Korean or Chinese papers included.

JOHN CONKLIN: Well my understanding is there's an agreement with the New York City board that we will provide the Spanish because there are some Spanish requirements outside the confines of the city of New York.

And the city of New York takes care of the Korean and Chinese.

I made an inquiry to confirm that yet but I'm in the process of trying to do that.

KELLNER: But we are responsible for the advertising.

VALENTINE: Well, it's been yes, that's true, legally.

But we've had an arrangement with the city where they would meet our obligations with regards to that because there's other spendings.

It's a long standing arrangement.

But certainly we can do that publication, we just didn't want to act inconsistent with what the city board might be doing.

AQUILA: So you're not doing a double and you're not doing it differently.

VALENTINE: But in the past, we've we had an arrangement with them to do that.

AQUILA: Are there only 4 languages? Why am I thinking there's another language?

KELLNER: The legislature just added Russian.

VALENTINE: Russian.

AQUILA: I was going to say I thought there was Russian, yeah.

Russian, absolutely.

VALENTINE: But that's not here yet.

AQUILA: Oh, not until January. Okay. Okay.

I was thinking we're leaving somebody out. But Okay.

I'm not so sure that I understand we get cheaper printing from the smaller dailies, but I'm maybe people from Brooklyn are different.

But people tend to read the propositions a little. They want to know. They want to know what's going on.

Constitutional amendments and things, they kind of read them.

So I'd leave it to you gentlemen, I'm not going to say one way or the other.

Saving money is very important because I know we're getting our budget cut and cut and cut.

That might be the prudent thing to do this year, what Doug was suggested, you know.

But I just say I think that there are some people out there that still read a newspaper.

I know everybody goes on that machine.

PETERSON: As a Yankee fan I don't want to start new problems with Brooklyn. Whatever you want to do, you can do it.

AQUILA: If our old Dodgers were around.

WALSH: Campaign Finance, Elizabeth Hogan.

Campaign Finance / Enforcement Unit

ELIZABETH HOGAN: Thank you, Commissioner.

We have been very, very busy in campaign finance, I'd like to just give you a quick reference to some of the areas that we're dealing with right now and the volume.

We have surpassed the 11,000 mark in candidates and committees, we're up to 11,209 as of that date and rising.

That's a 10% increase just through September of this year over all of 2008.

Terminations are down and therefore, the net effect is that we have more active filers to manage than we did last year.

So far this year we have received approximately 19,000 filings.

Last year we received just over 23,000 for the year.

We still have several filings, this year we'll be pretty much on target.

The call volume we're dealing with in campaign finance has increased significantly and of course as I always make you aware that our staffing there is tight.

We're working in this area right to the edges of the margin in terms of everybody doing everything, you know, working 100% and really being, you know, really stretched I pray daily that I don't have anybody come down with the flu.

Because that's going to really set us off.

Just for example, the call volume through September of this year, we've taken about 1650 calls.

Last year in all of 2008 we took just over 900.

So we're significantly above what we were last year.

Just an example of the day, last Friday October the 2nd was a filing day.

We took approximately 200 calls.

I think it was 198 or something, we took 200 calls.

We were very, very fortunate.

We just with the staff that we have, we managed to answer 90% of the calls.

We had 20 dropped calls.

People who dropped out.

Abandoned we call them in our report.

Most of that, people who abandoned their call did so in the first couple minutes.

People held up to 15 minutes.

But we were able to service 90% of the people who called us on Friday which was the filing day.

The mail volume we're significantly above last year through September.

We've handled approximately 12,000 pieces of mail.

You know, we have a couple of people, one person specifically dedicated to mail.

Last year we handled approximately 7400 pieces in the entire year.

So we're well above last year's volume and I bring these things to your attention because I want you to be aware that the demands are increasing and everything else is staying flat.

Everybody's pushed and everybody's working very hard.

The education and training unit they've been working with IT on the operating system neutral software.

We had a meeting, Bill and me, George, a couple people.

We had a meeting and then the staff has had subsequent meetings themselves addressing this, you know.

They're finding issues, addressing, you know, little things that need to be built in to the software.

And George's people have been excellent to deal with regarding this.

That staff is also starting to review our handbook which we do annually.

This year we had some issues. Last year we put in the potential rate change and we highlighted that wherever necessary.

This year we'll have to go through and implement the fact that the reg was adopted by the board and that there are changes.

That was the duplicate filing issue where now if you have an obligation to file here at the board and you do it, that will suffice as your obligation to file with the local board.

We've taken a lot of calls from the counties on this issue and we're hoping that they understand the extent of that.

It's not that the state board is taking all filings at this time.

We worked hard to try to get that across.

Our other people are working on the audits as we discussed previously.

The 2008 legislative audit, the 2008 corporate.

We set a timeline as you indicated to you earlier in this year and we're close to that timeline.

I think we went over maybe a little bit.

But not significant.

We're on track with that they're also working on a 2006 state wide audit.

It was very important for us to do that particular audit has it had been for us to do the legislative and corporate for folks to get a baseline procedure for how to do this.

Writing basically the program for how to do this kind of an audit is extremely time consuming and extremely complicated for our staff and they've worked really hard and they've done very well in terms of the other kinds of audits that we've run successfully which is the legislative and corporate last year and that we're working on this year.

So we have a streamline procedure in place.

So for the statewide we're kind of incorporating that and so that the next time around we're going to have a much easier flow because we have a process in place and we know what we need to incorporate and what we need to discard.

They've just last week we sent the third letter to the county boards in our attempt to build up our local candidate identification database, the list that we asked them for just last week was the local candidate identification for the general election.

This issue we've repeatedly talked about for the past years that we don't have a database in which local candidates or offices are identified.

And so it appears that we're not going to get the money to be able to do that.

And so we're attempting in 2007 we tried to do it in one way.

It didn't work out.

We're attempting to do it this way but much of the information that we're getting is just applicable to this particular time frame.

Our candidate identification is fine but eventually we're going to need to incorporate that into the office identification in terms of what offices and what municipalities are up, how frequently

they're up, whether legislatures run for partial re election every couple years there's a huge project here that we're trying to work on but it's very time consuming and it will take us a while to get there.

I think that's about it.

Bill, would you like to add anything to that?

BILL MCCANN: Sure, just a couple things, Liz.

Commissioners, we had been working with New York City campaign finance board relative to a runoff that they had down there.

There was a conflict among filings are due because there are additional filings but because our software and database can only accommodate certain times and it was a crossover, we worked with campaign finance board to come up with an accommodation that would be practical to both the few committees that would have to make those filings as well as more technical limitations.

I'd also like to take a moment if I could introduce Matthew Robinson-Lowfler from Albany Law School; one of our two interns this year from Albany Law School.

Matt along with Bob Barrows are working in our office downstairs and doing exciting research.

There are always those things that you felt that you have time to do and you never quite get to it.

So it's a great resource that we have and we've worked with Albany Law School for many, many years to get the interns, so I just wanted to have an opportunity to ...

Matt, stand up.

Thank you.

Thank you.

Free labor.

Use it.

WALSH: Any further questions?

KELLNER: I'll just add Liz and anyone else, some of the information you give is repetitive and I think it's important that it is.

I'm speaking with reference to the workload and the number of people you have to do it and the volume how it's growing.

Everyone who looks at budgets particularly people outside this agency look at your budget and assume there's some fat in your budget, you have more people than you need to have and if you don't continually bring this up, particularly publicly.

I would say to anyone else here who has that kind of responsibility, keep bringing it up because that's the way you protect the workforce you have and perhaps enable you to add to it as you need it.

Otherwise people make wrong assumptions sometimes.

So thank you for your report.

HOGAN: Thanks.

WALSH: ITU, George Stanton.

Information Technology Unit

GEORGE STANTON: Thanks, Commissioner.

Excuse me.

We've been working on... this is a little bit repetitious because we've been working on the filings that Liz already mentioned.

We did the 27 day post primary and 32 day pre-generals, we do in ITU we do the Help Desk as far as the technology pieces go and people using the software and what to do and so forth.

Also loading all of the filings as they come in.

So we've done those two filings since the last meeting.

As Liz also mentioned, we've been assisting with the usability of the system neutral filing software going back and redesigning some of the pages to make it a little more user friendly.

We've been working on that within ITU and we'll be presenting some of the changes to campaign finance to look at in the future.

And we've also been assisting campaign finance with the as the intermediary I guess for the scanning of the documents from campaign finance working with the vendor, working between the vendor and campaign finance on that.

We've also been doing our usually daily monitoring of the NIZE voter software which also includes the Help Desk calls from the county users on, you know, password changes, how to use the system, those kinds of things.

We have been updating poll sites, information for the Web.

We got poll site update information for the primaries where there were changes and then we have to change them again for the as the counties send that information to us.

We replaced the failed storage area network hardware controller, kind of a typical maintenance thing.

We do have redundancy but we had to shut the system down for a few hours, replace that and bring it back up last week, I believe it was one day.

Also worked with Pat and Vicky on the reports that they do for their monitoring of the NYSVoter system, work with them giving them any extra reports they might need or explanation of information they're getting from the reports.

Of course we are working with the Steering Committee on a weekly basis also attending meetings and keeping the Steering Committee up to date.

There is a lot of duplication of effort going on.

This just came to my mind because of.. actually because of Todd and Bob's budget.

I'm also responsible for doing the budget for 2010 -11 as far as Information Technology goes.

They call it the Annual Technology Plan, which coordinates with that so we have to keep that in mind.

I have to have that done by the end of this month, I believe.

We're filling out a questionnaire from the Governor's accountability office which is pretty much a duplication of effort that we have to go do for the office of technology.

So between Dan and me downstairs we spend about half of our time just doing these surveys for other state agencies.

So basically that's what's happened in the last month in IT.

JIM WALSH: Thank you, George.

Old Business

Old business.

Vote on the extension of emergency regulations 6209, relating to undervote notification.

Extension of Emergency Undervote Regulation 6209

Paul Collins.

PAUL COLLINS: We passed, on an emergency basis, this regulation a couple months ago.

Actually, nearly three months ago.

It will expire after its 90th day on October 18th.

Therefore, it was necessary to readopt it on an emergency basis for an additional 60 days to get us through the November election.

The permanent regulation was filed with notice of intent to adopt regulation on a permanent basis was filed with the Secretary of State and was published in the state register on September 30th.

So 45 days from then we will be able to adopt this regulation on a permanent basis.

What will happen today is we have a proposed resolution in there.

When the board hopefully adopts the resolution again, on an emergency basis for the next 60 days, I'll file all of the appropriate paperwork with the Department of State and we will have the November elections run properly in accordance with this emergency regulation eliminating the undervote notification.

Where appropriate?

JIM WALSH: Anyone have any questions.

So moved.

Second?

All in favor.

[Chorus of Ayes.]

Carried.

Item B.

Discussion of the post election audit proposed regulation 6210.18.

Post-Election Audit Proposed Regulation 6210.18

Commissioner Kellner.

DOUGLAS KELLNER: Well, I understand from speaking with Todd this morning, that there was a meeting yesterday with the county commissioners and that specific text will be forming coming in terms of their proposals.

As I said last month, you would have preferred if we'd adopted the regulations and then work on amendments down the road.

But I just want to make sure that this stays on our agenda to make sure we're moving forward.

Because the most important thing to have regulations in place even if they're not perfect?

JIM WALSH: You're set?

Thank you.

I agree.

JIM WALSH: Item C, discussion on proposed formal opinion regarding the village of West Hampton Beach.

Formal Opinion Regarding Village of West Hampton Beach

Paul Collins.

PAUL COLLINS: At the last meeting of the commissioners counsel's office was charged to prepare proposed formal opinion.

I've done that.

Todd had some revisions, I had further revisions, and I think essentially there are six questions which that letter poses pursuant to having something to do with the election law.

And I have done a draft and redraft and I don't think Todd has signed off on it yet. So we're sort of there.

VALENTINE: With regards to that, I said this briefly just because of the time element I wasn't able to do since the New York State Conference of Mayors had actually already issued an opinion to this village with regards to this same letter, it's just a question of reconciling to make sure that if our expertise is election law.

So ours is the opinion the village should be relying on but we have to make sure just to reconcile the two that if there's a corrective statement that needs to be made, to acknowledge that A, you've gotten this opinion and here's why that doesn't quit fit the facts.

It should be this opinion.

It's a question of making sure the village doesn't get confusing advice from two different agencies they rely on.

The conference of mayors is a private organization.

But they take a very strong role in advising villages on elections.

They produce an all election calendar for the villages they rely on.

We do review that and I see that this is we should be in the same role here.

But if they've gone in a direction that is improper for or in the wrong path, then we should correct that and at least acknowledge that in our opinion.

So it's just a question of making sure that we incorporate that.

Unfortunately, time did not permit me to finish that.

And I've taken on that role just not to throw Kim cut Kim out of the loop.

But just because of my long standing history.

GALVIN: Cut me out, that's fine.

COLLINS: With the counsel's office.

But I think we're very close and there's no reason at the next meeting we shouldn't be able to come back with something that addresses all those issues.

JIM WALSH: Very good.

Let's put this over to the next meeting.

Table it to the next meeting?

JIM WALSH: New business.

New Business

Report on resolution to report legal notices for statewide propositions, John Conklin and Bob Brehm.

Legal Notices for Statewide Ballot Propositions

CONKLIN: Go ahead, Bob.

BREHM: We're withdrawing the need for the resolution as the prices are legally prescribed as to what we can pay and you've already approved the words.

So it's just a matter of carrying out the business and a number would probably impede our ability to publish.

But basically we're working on the earlier discussion and we're researching the coverage in New York City?

JIM WALSH: So you're satisfied where we are?

BOB BREHM: We're researching the Spanish language, Chinese language and Korean language.

We have a proposal for the translation and proposal to publish the English and Spanish and we're looking at the ability to cover the Chinese language and the Korean language.

JIM WALSH: Thank you.

Item B.

Vote on resolution to replenish state certification testing fund for test expenses to be paid for by New York City board of elections in the amount of $100,000.

Vote on Resolution to Replenish State Certification Testing Fund

Anna and Joe Burns.

ANNA SVIZZERO: We need to replenish the account there are generic costs we are paying for and moving a significant unknown amount of money early on.

We said we'd come back to you periodically and this is one of those instances, we're not sure we're going to have to come back before the end of the certificate function process but that remains to be seen.

So $100,000 to take care of our immediate commitments.

JAMES WALSH: Motion to approve?

KELLNER: So moved.

JAMES WALSH: Second?

All those in favor?

[Chorus of Ayes.]

JAMES WALSH: Oppose? And carried.

Vote on resolution allocating certain unallocated 2006 HHS, Health and Human Services poll site access funds for use by the CBOEs, counties, $89,750.

Vote on Resolution Allocating 2006 HHS Poll Site Access Funds

Bob Brehm.

BOB BREHM: Previously the state received a grant from Health and Human Services for $620,763.

The way we anticipated using the grant money, a large portion was already appropriated for use by the counties in meeting the poll site access improvement program.

A little under 90,000 was set aside for the use of the commission on quality of care and advocacy, persons with disabilities for the use and training that we are jointly providing to the counties.

We're continuing to do that but it was paid for out of a different manner.

We're asking to you reallocate the remaining money for the use of the county boards so we don't lose the money back to the federal government.

The counties will have an additional sum of money to meet their obligations so we're asking basically for you to vote to approve the 89,750 for use by the county boards.

JAMES WALSH: Do we have a motion?

KELLNER: So moved.

JAMES WALSH: Second?

All in favor?

[Chorus of Ayes.]

JAMES WALSH: Opposed? And carried.

Update on the pilot program 2009 implementation, primary election report.

Update on 2009 Pilot Program Implementation, Primary Election Report

Anna and Joe.

ANNA SVIZZERO: We did provide the report to you that's based on our board visits.

We have some general observations we spoke about.

Earlier in the unit update.

We are reviewing procedures, Tom Wood is going through those with our team to see that now that some of these have been used and boards have had a chance to comment on them, is there an amendment to any of those that's necessary?

We're also looking at the various forms that we developed new certificates for the canvas reports, security logs and that kind of thing.

There is a certain amount of duplicative work in that regard.

From security perspective because when these documents come back to the board, some go one way for the audit to begin and another way for the canvass to begin but you need to have the same information if both of those areas.

We're looking at those, boards have shared those opinions with us. We're looking at pens.

We had boards send us pens and give where they bought them and how they worked out. We're doing the same thing with seals and locks for the voting machines.

Sounds pretty basic. But some people buy cheap stuff and you get what you pay for and other people buy what's prescribed and it works out better.

So we're hoping to have a little shopping list for everybody based on actual use of those marking devices and seals and locks.

Other than that it really is a training piece, I think our boards on election day the phone calls that we fielded here in the office and comments that were made by Joe and Bob and Commissioner Kellner and certainly other staff members were that lever machines were more problematic than the OPSCAN systems in the pilot where it was only in partial use in the counties, that was kind of telling, those machines really do need to be moved on.

Again, the counties that embraced it had a lot more success with the pilot.

The general election will be more telling.

Some of these pilot primaries were truly minor party lines, OTB primaries.

The impact, the voter path of travel, the voter quantitative use of the systems is really going to be more telling in the general election.

We have a survey that went out to the boards to document some of their own experiences and comments.

We'll have a more elaborate one at the general election.

But other than that, I think the report speaks for itself and we're happy to answer any questions that you may have?

JIM WALSH: Anybody have any questions, Bob?

BREHM: Not a question but one other comment.

Todd and I received a note from ECA President Bill Scriber from the Election Commissioners Association and he in turn received recommendations from both party caucus leaders for names to serve on a pilot program steering committee to do the evaluations so one of our items is to set up a time.

We discussed to bring them on board for a conference call and discuss their issues related to the primary election and also how we can coordinate better for the general.

So we received that list on September 29th so we're setting up a conference call with them?

JIM WALSH: I presume I wish this is the point we'd enter the judicial

KELLNER: Can I make one more comment on the pilot.

Anna, I hope we will send out something to the counties that at least describes some of the best practices, that a little more I mean, I realize there's been a lot of informal feedback that's gone around.

And you're setting up this steering committee.

But information needs to get out fairly quickly in order to be useful for the November pilot.

And I know for example we observed two things, one is that in a large number of poll sites that we visited, they didn't really set up the privacy booths in the proper manner so that the voter would be able to vote in private and there would be sufficient disability clearances for disability voters to get into the privacy booths.

So, just a simple reminder that should be part of the training.

And then we saw a wide variety of practices with respect to the seals.

The board has the guidelines on seals that were circulated to all the county boards.

Certainly one of the things that you think we saw that struck me as a best practice was in Onondaga County, they used the colors of the seals as part of their training for the inspectors to say the red seals the inspectors never touch.

Those are just for county officials.

The blue seals are seals that you put on in the morning and then you'll take off when you access the ballot box and the yellow seals are have a different purpose.

So as a training device and mnemonic that seemed to work very well.

We also some counties where they never even filled out the logs for the seals.

Obviously everybody needs to be reminded, and everybody needs to be reminded, there's a reason for that.

So I think we should have some comments that get circulated to all the boards that are involved in the pilot project within the next few weeks.

ANNA SVIZZERO: We highlighted some of those best practices in the report but we're pulling those out and making a bullet, just kind of a tip chart of those kinds of things.

The colored seals, several boards used that.

We were really I think Jefferson County where Joe visited and Broom County and a couple others.

So I think it's helpful when we get on those conference calls and those ideas get shared.

But we certainly intend to memorialize them so that everybody can see them in abbreviated way rather than have to read that 50 page report and call them out.

The boards that add what we would consider more severe problems we're going to set up conference calls with them and really work with them to make sure that there isn't a repeat of those kinds of really troubling issues in the general election.

AQUILA: Overwhelmingly though, how did you think it went?

ANNA SVIZZERO: I think went great.

We talked about that in the office.

Everybody's trepidation was warranted.

It brought the issues up front and boards had to find a way that deal with them.

It's not easy when the counties aren't funding for additional training session that's have to be helped.

Aren't helping the board get the additional custodian technician staff assistance they need.

But I have to tell you I think we all feel that they did an excellent job and that it went very, very well and we're expecting the general to be even better.

AQUILA: I ask the Commissioner, you were in the field

DOUG KELLNER: Yes, I agree with Anna's assessment and I think it was really good that they could do it in a low pressure primary environment.

So that we've now built up this experience in doing real elections...November will be much more there will be many more voters participating in November than were participating in September.

But we are building a base of information so that we'll be ready next year when we go.

AQUILA: I've seen the reports we received and they were pretty good too.

And you, Bob, might as well get everybody's experience.

BREHM: I thought it was the same experience.

We saw where the actual hands on training really made a difference in the election.

In the counties we went to as far as, you know, they were not they were nervous whenever you do this amount of change from a leader system to anything different, change always makes people nervous.

But where they had repetitive small classes where they could repeat the steps over and over in groups of 6 or 8, you know, we heard from the inspectors that they thought it was very valuable to them to go through the paperwork so it wasn't a surprise.

They at least understood the consents.

They still have a way to go.

Step by step issues they could go to the book and find out what to do.

There still are issues with path of travel for the adequacy of certain polling sites as to where in the building is the plug to put the machine and the privacy booths.

Where in the flow do you want to put these items? You know, they had excellent flow I thought in Fulton county when we visited because everybody qualified for their ballot and then they moved the person to the sample table where another group of inspectors were there to make sure they could are there any questions?

Here's a sample of what a correct mark is.

Here's the ballot and then looped over to booths that truly were private and then the last stop was at the voting machine and people you know, that's where we actually had experience of the we were there about 6:30 or 7:00 at night.

It was a major party primary and they had about 240 people had voted at that site and about a dozen voted during the period of time we were there, which was about 5 or 10 minutes and they had very positive reactions as to how things were set up and it wasn't complicated for them.

So the board did a great job in training, laying out and having a plan and stick to it.

JAMES WALSH: I think I speak for the commissioners and board of elections and say where we congratulate everyone for an excellent job, if something went wrong, you can bet your life it would have blown up a thousand times the size.

And also congratulate them for the courage they had to volunteer for this.

Many people were reluctant and held back and said we'll wait to see what happened there.

The ones who chose not to participate may be sorry they didn't because everyone who did participate learned, I think they learned positively and they have things that will help them in the general election.

I congratulate them.

They were courageous in doing what they did and they're proven for their decision has proven well for them.

We have a new item added to the agenda and I would ask that Kim enlighten us on this and get this on the record for us so we can conduct a vote.

Petition Review

KIM GALVIN: Sure, each of the groups has before them a staff report on the prima facie review on the petitions that we received from the justices of the Supreme Court around the state.

There were a few issues that we had with them.

One in the 10th Judicial District specifications were in fact filed but no proof of service which is required to be filed with us as well was ever given to the board.

So we have an inability pursuant to regulations to rule on them without the proof of service being filed with us.

And then with regard to the second matter, it's a conservative declination, there were, in our opinion, many things wrong with that particular document.

Including but not limited to the no judicial district was listed which means we probably could have tried to figure out.

However, the declination wasn't acknowledged and what is listed here is that only a photo copy had been filed with us, not even an original signature, so it would be the staff's recommendation that both the specifications and the declination, one I believe to be the 8th, wasn't it the 8th.

DOUG KELLNER: I move adoption of counsel report.

JAMES WALSH: Second?

[Chorus of Ayes.]

JAMES WALSH: Opposed?

Carried.

DOUG KELLNER: Kim mentioned before that there's one outstanding general objection where the deadline for specs is tomorrow.

My suggestion is – and they're in court on Friday – that unless counsel is going to recommend that we sustain the objection, in other words, rule that the objection is correct and that the candidate should be stricken from the ballot, that there's no need for us to personally meet; because if we take no action, it's the same as coming together to vote to overrule the objection.

The candidate would stay on the ballot unless there's a ruling otherwise.

If that's acceptable to the other commissioners, that's how I'd proceed rather than tentatively schedule a meeting Friday or Saturday.

AQUILA: Are you alright with that, Kim?

GALVIN: Yeah.

Clearly from what I've gathered in the paperwork, I think it's going to be well beyond the scope.

AQUILA: I just wanted to know if you were comfortable with this.

GALVIN: It's fine.

JAMES WALSH: All commissioners are comfortable.

EVELYN AQUILA: Do we have to vote on it or anything?

JAMES WALSH: No.

The vote to go into executive session for discussion of enforcement matters.

Motion?

Second?

All right.

Okay, we'll go into executive session for enforcement matters.

Executive Session (lasts approx. 29 minutes)

Post-Executive Session

DOUG KELLNER: We're tabling the 09-122 and then we're adopting all the rest of these and we're adopting the formal opinion and then we have the adjournment.

JAMES WALSH: Call for a motion...Back in session...All right.

Thank you, everyone.

We have concluded our executive session and we would like to vote on our determinations.

I'll accept a motion from the commissioners.

DOUG KELLNER: First we're going to table 09-122 for the next meeting.

And then we're moving the adoption of all of the other preliminary determinations and complaints not requiring preliminary determination as set forth in the agenda.

EVELYN AQUILA: Call the vote.

JAMES WALSH: All in favor of the motion?

[Chorus of Ayes.]

JAMES WALSH: Opposed?

Carried.

I'd like to announce...

DOUG KELLNER: Alright, the next is I move the adoption of the formal opinion drafted relating to the use of legal defense funds.

JAMES WALSH: Second?

GREGORY PETERSON: Seconded.

JAMES WALSH: All in favor.

[Chorus of Ayes.]

Opposed?

Carried.

BILL MCCANN: I'd like to add for the record that the authorization from the board to execute on behalf of the board the stipulation of discontinuance on the realtor's matter.

DOUG KELLNER: So moved.

JAEMS WALSH: Second.

All right.

All in favor?

[Chorus of Ayes.]

Opposed? And carried.

I'd like to announce our next meeting the date will be November 10th and next is December 15th, always subject to change but November 10th, December 15th.

Can I have a motion to adjourn?

DOUG KELLNER: So moved.

JAMES WALSH: All right.

[Chorus of Ayes.]

Away we go. Thank you all. Thank you very much.

END OF AUDIO