Table of Contents:

Board of Canvassers.....4
Opening of Regular Meeting.....8
New Business:
a. Certification of Voting Systems.....9
b. Consideration of Reso to Finalize adoption of Permanent Reg Part 6209.2(a)(8).....29
c. Consideration of Resolution to approve amendment to value of Contract #C002852 for Certification of Voting Systems by SysTest Labs, Inc.....29
d. Discussion of 2010 Legislative Package.....30
e. Approval of Minutes.....30
f. Unit Updates.....31
Old Business:
a. Consideration of Resolution to amend Regulation Part 6210.18.....31
b. Discussion of Draft Opinion on Village of West Hampton Beach.....31
c. Discussion of Adoption of New Voter Registration Form.....32
End.....35

>> DOUGLAS KELLNER: Are we on?

I'll take care of it, John.

>>GREG PETERSON: Rock and roll.

>> JIM WALSH: Good afternoon, everyone.

My name is Jim Walsh.

I'll be chairing today's meeting.

I welcome you all here.

We will start with what we normally do our introduction of the Commissioners and everyone who would like to introduce themselves.

Commissioner?

>> DOUGLAS KELLNER: Douglas Kellner.

>>: Evelyn Aquila.

>>: Greg Peterson.

>>: Todd Valentine.

>>: Kimberly Galvin.

>>: Paul Collins

>>: Joe Burns.

>>: Anna Svizzero.

>>: Bob Warren

>>: Pat Campion

>>: John Conklin

>>: Bill McCann

>>: Liz Hogan

>>: Bob Brehm.

>> JIM WALSH: Guests from the left.

>>: Susan Robach (?) --

>>: Tarry Breads, NYSBOE

>>: (Off microphone.)

>>: Judith Brink -- concerned citizen.

>>: Coleen Taverna -- protection of voting, activist (?)

>>: Kathleen O'Keefe, NYS Assembly

>>: David Kugelman, NYS Senate Counsel.

>>: Steve

(Off microphone.)

>>: Lloyd McClellan, Guilderland Neighbors for Peace.

>>: Ed Smith, Dominion Voting Systems.

>>: Howard Kramer, Dominion Voting.

>>: Aimee Allaud, League of Women Voters of NYS.

>>: Bo Lipari, member of the CEMAC.

>>: Greg Jones, Commission on Quality of Care and Advocacy for Persons with Disabilities; member of the CEMAC. (Off microphone.)

>>: (Off microphone.)

>>: Ken Carbalito, ES&S.

>>: Bill Lamdin, News Channel 13 reporter

(Off microphone.)

>>: Virginia Martin, Democratic Commissioner, Columbia County Board of Elections.

(Off microphone.)

>>: Susan Collins, transparent

(Off microphone.)

>>: Nils Ekberg, NYSTEC.

>>: Rob Zegland, NYSTEC.

>>: Bob Groncziak, NYSTEC.

>>: Jet Henry, SysTest Labs.

>>: Rick Carlin, Albany Times Union.

>> JIM WALSH: Thank you all, welcome.

>> DOUGLAS KELLNER: Commissioner, could I just take a second to acknowledge or congratulate Ed Smith on his recent appointment to the Technical Guidelines Development Committee of the U.S. Election Assistance Commission, which certainly is a prestigious recognition.

>> EVELYN AQUILA: Congratulations.

>> JIM WALSH: Thanks from all of us.

Thank you.

Board of Canvassers

Our first order of business, the certification of the election results from the November 3, 2009 general election.

Do we have a motion?

>> EVELYN AQUILA: Motion to accept.

>> DOUGLAS KELLNER: I second it.

>> JIM WALSH: On the question?

>> DOUGLAS KELLNER: I just wanted to comment that there has been much publicly written about the canvass of the results in the 23rd Congressional District and much of it is highly inaccurate.

Two issues in particular that I think are worthy of comment.

First is that some of the printed reports and also a written submission that we received from Howard Phillips this morning still claim that votes changed during the canvass process, which is a misunderstanding of the process in New York.

Election night returns are unofficial and in general do not come from the election officials.

These are private reports that are given to the media and the media publishes them.

And no election professional, whether it be an election administrator, whether it be a candidate or whether it be lawyers who handle the election process rely on the election night returns because they know that the election night returns have a huge margin of error because of typographical errors or the oral transmission that happens when results are transmitted over the phone lines.

And so to claim that there are changes when the actual canvass is done that takes the returns that are printed out from the machines, whether they be the numbers recorded on the lever machines or the canvass reports that are printed out by the new optical scanning equipment and to claim that those numbers have changed is just inaccurate and it misleads the public.

Those of us in the election field know better and the candidates know better.

But to mislead the public along that way I think is a disservice.

In fact, in this election the canvass of the election was done thoroughly.

It was done in a transparent manner with the participation of all three candidates' representatives in every step in the process...and also with court supervision.

And there has been no issue with respect to the canvass that would indicate that there is anything inaccurate about the final results of the canvass.

The second thing is the confusion that has arisen over one issue that was discovered in the pre-election testing, which was inaccurately described by one of the county elections Commissioners as a virus in the system.

Of course, it was not a virus.

This was reported on by our election operations unit at the last meeting, that in the pre-election testing we discovered that where there was a particular configuration in a multi-candidate race with a large number of candidates with cross endorsements, that the buffer by which the ballot water mark is stored that shows how the ballot is counted in the computer record on the machine, that that buffer would overflow under certain circumstances.

And that the machine would stop functioning because of the buffer overflow, which is a proper safety built into the machine.

This was discovered in the pre-election testing.

The vendors were notified of the problem.

The problem was a source code problem, where one line of code could correct the problem.

The vendor did immediately provide that line of code, but under our regulations new code cannot be inserted in the machine without going through the certification testing process and therefore the State Board properly notified the county boards that they could not put in new code.

The vendor went back and said there's another way to work around this problem which is to change the ballot configuration file so that the buffer would not overrun.

That does not require source code change or certification because it's just the minor change in the configuration of the ballot.

And the county boards were notified of that corrective measure.

Most of the county boards followed the instructions to modify the configuration files and the elections in those counties proceeded without incident.

There were a couple of places where the counties overlooked election districts that had that problem and had not done the configuration file.

So those machines froze, as indicated would happen from the pre-election testing.

And they were required to use emergency ballots, which of course is the procedure that New York has when the machines stop.

So no one lost their vote in that process.

We did learn lessons.

We learned the lesson that it is very important to do the pre-election testing to identify problems of that nature.

And, we learned the lesson that it is important to follow up on that pre-election testing in order to avoid the problems on Election Day.

But the bottom line is, even when the problems exist on Election Day, the emergency ballot procedure works to make sure that every voter still has the opportunity to cast their vote and that their vote is ultimately counted.

So we have carefully reviewed those issues at the State Board of Elections and we have carefully reviewed the canvass results here and I am very confident that the results are accurate and, therefore, I will vote in favor of certifying the canvass results.

>> JIM WALSH: Thank you.

As Commissioner Kellner was speaking, I was thinking I have firsthand knowledge of inaccuracies of election night results having been a candidate many times and having the honor for running for office, not always successfully.

One night in the City of Troy I was announced as the only winning Republican in the city.

It wound up that that was not true.

We had a happy hour or so and then the truth did come out that the numbers were not accurate....there's still more information yet to come.

So I can speak firsthand

>> DOUGLAS KELLNER: And you didn't think anybody defrauded you.

(Laughter...)

>> JIM WALSH: Thank you very much Commissioner. We'll call for a vote on the motion please.

All in favor say "aye."

(All members responded "aye.")

>> JIM WALSH: Opposed?

(There was no response.)

>> JIM WALSH: Carried

>> DOUGLAS KELLNER: You have to sign the paper.

>> JIM WALSH: We are going to sign the approval of this resolution.

So take a moment, if you would, please.

>> EVELYN AQUILA: Making marks.

>> DOUGLAS KELLNER: Evelyn?

>> EVELYN AQUILA: Thank you.

>> DOUGLAS KELLNER: Would you sign then the two pieces of paper?

>>ANNA SVIZZERO: The one on the right.

>> DOUGLAS KELLNER: Two pieces of paper?

>> ROBERT BREHM: The signatures.

>> DOUGLAS KELLNER: No, it's three pieces.

>> EVELYN AQUILA: There are several.

>> TODD VALENTINE: There's the ballot and

>> JIM WALSH: Oh, I see. That's all right.

>> DOUGLAS KELLNER: So we have…

>> TODD VALENTINE: The two statewide proposals, the Congressional Elections and the Supreme Court Justices.

>> EVELYN AQUILA: Four.

>> TODD VALENTINE: Four.

>> DOUGLAS KELLNER: Is there a statement of canvass in each one of them? So I haven't signed that.

>> EVELYN AQUILA: Right.

>> JIM WALSH: No, you're doing fine.

>> EVELYN AQUILA: There you go. There's one.

>> BOB BREHM: You'll need that.

(Overlapping speakers.)

>> EVELYN AQUILA: There's a system.

>> DOUGLAS KELLNER: You have to sign that.

>> EVELYN AQUILA: I have to?

>> GREG PETERSON: Last page of this.

>> EVELYN AQUILA: Okay.

I dated it already.

I thought I had.

I thought there was something else.

I think there's one more.

That one goes to Greg.

I think that's everybody now.

>> TODD VALENTINE: Yes.

>> EVELYN AQUILA: There's something there that you two have to sign.

>> TODD VALENTINE: We'll take care of that.

>> JIM WALSH: All confirmed signatures? Alright. We have completed our signing.

Opening of Regular Meeting

We will return, take up the normal business of the State Board of Elections for our scheduled meeting for today.

I would ask our fellow Commissioners if we can have a motion to take the agenda out of order.

I know everyone is here for the certification discussion that will be taking place.

We are going to put that, with the permission of my fellow Commissioners, put that as number one of the agenda right now and return to the regular agenda after the completion of that subject.

If I can have a motion?

>> DOUGLAS KELLNER: So moved.

>> EVELYN AQUILA: Second.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH; Opposed? Carried

>> JIM WALSH: Okay.

New Business: Certification of Voting Systems

Voting system certification, Anna and Joe.

>> ANNA SVIZZERO: Thank you, Commissioners, we think.

(Chuckles.)

If you'll bear with us, it has been a very long process.

We have prepared a report for you which we will present portions of and we'll have copies distributed.

In 2007 the New York State Board of Elections adopted state voting system requirements.

They are commonly known as part 6209, which included the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines.

Those were incorporated into our own regulations.

Subsequent to that process, the State board entertained requests from multiple voting system vendors for system certification that would legally authorize their systems for sale and use in New York State.

In furtherance of developing our certification process in 2007 the New York State Board of Elections procured the services of an independent testing lab, SysTest Labs that would conduct actual system testing as well as the services of NYSTEC, which stands for the New York State Technology Enterprise Corporation.

That entity, NYSTEC, would be responsible for, and act as, an independent security adviser with respect to the security testing on behalf of the board.

In 2008 several vendors sought New York certification of their systems.

After the county Boards of Elections made the initial voting system choice, it was clear that two of the five companies were preferred and only those two systems remained in the certification program through to completion.

The two firms which completed the certification process are Dominion Voting Systems which submitted their ImageCast, which is a precinct-based optical scanner, available with or without a ballot marking device and Election Systems & Software, which we'll refer to as ES&S further in this report, submitted the DS-200, which is also a precinct-based a optical scanner and their companion AutoMARK, a ballot marking device.

Voter-assist terminal is also another term that is used for the AutoMARK.

In 2008, New York had to meet new obligations in implementing an updated federal court order which required New York's compliance with the Help America Vote Act via the placement of a minimum of one ballot marking device in each polling place in New York to serve all voters including those with disabilities.

In order to comply with the order of the Court, in a manner which provided a high level of confidence in using uncertified ballot marking devices, a preliminary and baseline HAVA protocol was implemented to make sure that the systems could be implemented with a high degree of accuracy.

A component of that baseline testing was a review of systems under consideration at that time by New York's CEMAC committee which you have heard mentioned here today in the introductions stands for Citizens' Election Modernization Advisory Committee.

That committee is statutorily charged with assisting the state in evaluations of the voting systems particularly with an eye in which voters with disabilities are served by these new voting technologies.

Begun in 2008, the certification process has been an unexpectedly long one with a very high learning curve and numerous obstacles.

New York is the first state in the nation to adopt the EAC Voluntary Guidelines as regulations, it necessarily subjects any voting system submitted for certification in New York to the most rigorous testing protocols in the nation.

Testing voting systems to these never-before testing requirements comes at a cost in effort, time and money that is unavoidable with the breaking of this new ground.

Interpretation of new requirements by vendors as they built systems and by New York State as we determined the applicability of the requirements and our own elections realm added to the testing entities constant need for interpretations of many vague requirements in are order to develop appropriate test cases.

This significant coordination of effort required constant monitoring and combining of different skill sets.

Lessons learned in New York will be reflected in systems we and others ultimately consider for certification.

The process itself began with the development of a fully articulated requirements matrix reflecting the 1524 requirements of New York's statute and regulations and the Voluntary Guidelines of the EAC.

From this matrix 26 unique test cases were developed for each vendor and within those test cases 6,730 test steps were developed to ensure testing to each requirement.

A dry run of our test steps was conducted to identify that the test cases would test all of those requirements and the process was followed by a run-for-record which produced the test reports we considered in making this recommendation.

The documents which accompany this recommendation include the report findings of both SysTest Labs and NYSTEC, each with compensating controls appended to them as well as some reports from both firms.

Also for consideration before the board is the resolution of New York's CEMAC committee in which certification is recommended.

The evaluations, however, of any voting system must take into consideration all of the technological reviews and tests that we have conducted.

However, it is critical that such technological findings be reviewed with real world functional perspective.

There must be harmony that connects the two aspects of whether voting systems can be used safely, easily and accurately.

The two systems before the board for consideration today have been tested harder and against more requirements than any other system in the nation.

Review of test findings has been extensive and centered on the ability to determine whether the voting systems are in substantial and material compliance with statute and regulations.

A review of the documentation of over 13,000 individual test steps has revealed that a handful of minor requirements may require some remediation as we move forward with these systems.

While our report must demonstrate that systems may have issues with particular requirements, we must note that these systems are the most robust voting systems on the market today and incorporate a significant number of positive features lacking in any other system on the market.

Am integral component of this review is the practical perspective garnered by monitoring the use of the voting systems in live elections.

In 2009, commissioners of the State Board authorized the use of these two voting systems in the pilot projects in the primary elections conducted in September and the general election on November 3rd.

47 of the state's 62 counties participated in the pilot project to varying degrees.

Some counties opted to pilot the systems in a single city or town or multiple poll sites but, most importantly, 19 brave counties opted to pilot the systems county-wide.

The pilot program was a resounding success as was the post-election audit success which overwhelmingly confirmed that these scanners accurately record and report ballot selections made by voters.

It is important to note that the opportunity to participate in the project was not offered lightly by the Board.

Prior to the approval of the pilot project by the Commissioners, unit staff conducted significant functional testing of these two systems.

The report on this round of functional testing has been provided to the Board to augment the documentation that Commissioners will consider in making their decision on certification today.

The pilot implementation provided an opportunity for the systems to be exercised outside of pristine lab conditions and ensured feedback not just on the technology's use but how that system was implemented using new security procedures and data integrity protocols.

Reports on real world experience and elections must be considered hand-in-hand with the technological review submitted so the board can consider multiple aspects of voting system operations in order to make its decision.

Reports of on site observations of elections unit operations staff are provided for the board to consider and include comments from voters, poll workers and election administrators as well as our own staff.

Review of various procedures provided county board which used only ballot marking devices, and new procedures that were provided to those who were participants in the pilot project will enable the board to understand safeguards and processes to ensure the integrity of our own election process from end to end.

Those procedures we have, we have posted those as a portal that they can use for constant resource, refresher courses and training sessions and we can provide them to you.

We did provided a sampling of them for you to consider.

As with any procedures, those that we have identified for you and those that we have shared with the county boards and those to be drafted in the weeks to come are all living documents meant to be reconsidered regularly to reflect useful changes stemming from the impact of their use in a variety of election settings.

The implementation of all procedures relating to the use of maintenance and use of optical scan technology will contribute greatly to the standardization of election administrations and election services across New York.

This recommendation of the Election Operations Unit was arrived at in a deliberative and reflective manner considering the voting systems themselves, the sum of certification testing and perhaps most importantly the functional testing which encompasses tests performed by the unit staff and lessons learned in the centralized acceptance testing process as well as the actual use of these systems in the pilot project in '09.

There will always be room for voting system improvements for as long as election administrators and voters continue to give constructive suggestions for the care and use of scanners and ballot marking devices.

In general, vendors must continue to upgrade systems to provide even more security features which will further enhance the suite of protections for election data as well as provide enhanced access for more of New York's voters.

County Boards of Elections must implement these new systems in as seamless a way as possible to ensure voter confidence and ease of use.

The State Board must continue to provide oversight and help to county boards so all that has come before this Board throughout this process is realized.

The road has been a long one…certainly a hard one.

In the end, after extensive review of the testing materials submitted by NYSTEC and SysTest, we have no doubt these systems can be safely and properly used by voters at elections under the conditions prescribed in Election Law, the requirements of HAVA and with the compensating controls that we've identified properly implemented.

We are confident in recommending that the Commissioners of the New York State Board of Elections vote to certify the ImageCast optical scanner and ballot marking device as submitted by Dominion Voting Systems and the DS-200 optical scanner with its companion, the AutoMARK ballot marking device, as submitted by ES&S.

Thank you.

(Chuckles.)

>> EVELYN AQUILA: Thanks, Anna.

>> ANNA SVIZZERO: Not enough?

>> JIM WALSH: Thank you. Any Commissioners have any questions?

>> EVELYN AQUILA: I'm asking, I think that Anna makes it look easy.

I know that her division has worked day and when I say night, I mean night.

There were times they were here 11, 12:00 o'clock at night.

This has been a monumental job.

No state can match New York State for what we have accomplished here.

We have tested these machines far beyond what some states have done. They bought them and plugged them in...let the chips fall where they may.

We care about our obligation to be protectors of the ballot.

And certainly you have come through for us, Anna, and we thank you very, very much.

All of your staff, Bob Warren, Joe Burns, all of you, my hat's off to you and thank you.

>> JIM WALSH: We all share...

>> ANNA SVIZZERO: Everyone had something to do with this.

>> JIM WALSH: We all share our compliments to you.

We know this was a long and stressful endeavor you embarked on. You handled it very well.

You need to be a politician to dance between the entities that you had to go through.

And I think of, I did have an opportunity to sit on the citizens advisory committee when it was first formed.

At that time, I thought that what was being attempted, the challenge faced, was impossible.

To try and meet all the needs of all the requirements that were being put on the table at that time seemed literally impossible.

I congratulate everyone who had anything to do with this, particularly the vendors, citizens' advisory committee, and the members of the Board of Elections here.

Because I think the impossible has been done.

And if people really knew what the challenge was listed, what you were trying to meet, the kind of accomplishments you were going to have, the challenges you had to make every person have the opportunity to vote secretly in secret ballot, no matter what your handicap or needs were, no matter the language barrier, and it has been accomplished.

Congratulations all around to everyone and mostly to Anna for the time she put in.

I know some of your fellow employees want to say something.

I don't want to take away from what they would like to say.

Congratulations to you and to your fellow workers.

>> ANNA SVIZZERO: Thank you.

>> GREGORY PETERSON: I would like to add congratulations to a job well done.

That goes for our entire Board.

This has been an arduous task, to say the least, and you have taken this thing and our employees have taken this thing from step one to today.

You're hearing this from a skeptic.

I was one who said right from the day one, I would never want to vote for anything, never want to vote on any machine except a lever machine.

That doesn't make...

Maybe that makes me somewhat of an antique.

However, that was a safe and secretive process.

I think it safeguarded our voters.

It made elections something we can have faith in.

I was never sure that coming into the modern age whether or not anything would come up to that standard.

Especially as we went through the process.

Again, an arduous process going through it.

There's no way this is ever going to make it.

Each time it seemed like they would make us one step forward, there seemed to be four steps back.

There were a lot of questions asked, some of them very subjective and some objective.

After the objective ones were taken care of, you had a bunch of subjective things that had to be dealt with, which was probably the most difficult.

How gray is gray, one of those things.

However, I can say with confidence in what has been accomplished here that the voting integrity of our system here in the state of New York not only has been upheld but we'll go into the future as a hallmark of what other states can and should do.

>> JIM WALSH: Commissioner Kellner?

>> DOUGLAS KELLNER: I have a few questions.

To run down some of the requirements in the regulations and to just review with you where we stand on this.

I'm starting with 6209.4(H) and subdivision one.

It says that the application has to contain an affirmation that the voting system complies with all applicable rules adopted by the State Board and with all applicable 2005 federal voting system guidelines, not inconsistent with state law.

Do we have those affirmations for each of the systems that have been submitted?

>> ANNA SVIZZERO: In our applications, yes, we do.

>> DOUGLAS KELLNER: You have them there?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: Okay.

Then 6209.4(h)(3), says that the application, the affirmation has to contain…

All right…

It says that the submitted voting system software does not contain any code, procedures or other material including but not limited to viruses, worms, time bombs, drop dead devices that may cause the voting system to cease functioning at a future time which may disable, damage, disarm or otherwise affect the proper affirmation of the voting system.

We have that language in the affidavits?

>> ANNA SVIZZERO: Yes, we do.

>> DOUGLAS KELLNER: You have that before you?

Okay.

Then 6209.4(i), that was a requirement of our regulations that the vendors file quarterly reports disclosing their political contributions.

And…

>> ANNA SVIZZERO: That requirement was ruled unconstitutional.

So, although those requirements were filed initially, we did advise the vendors that they did not need to file them any longer.

There may be a few posted to our Web site.

>> DOUGLAS KELLNER: Specifically the ethics bill passed in January 2007?

It was right after Governor Spitzer was elected, basically overruled that regulation and said that no contract…no state agency contracting with a vendor can require the vendor to disclose any information regarding political contributions.

>> ANNA SVIZZERO: We will double check the Web site.

We were posting those, but I thought we took them down.

>> DOUGLAS KELLNER: I thought you did. But I'm running through the regs now.

Turning to 6209.4(j):

All vendors shall submit with their application forms information regarding past or pending court cases involving their voting systems or its major components.

And I know we had a fairly detailed submission from ES&S and…

>> ANNA SVIZZERO: We do have one from Dominion as well.

>> DOUGLAS KELLNER: All right.

Then turning to the testing requirements, 6209.6(d)(1).

>> EVELYN AQUILA: I'll give this one back to you.

>> DOUGLAS KELLNER: All right.

Requires software and hardware clarification tests.

Do you want to review with us what was done in the context of the software and hardware qualification tests?

>> ANNA SVIZZERO: The software and hardware tests, the test cases were developed and appear in our test plan posted to the Web site.

These two systems have undergone extensive testing.

A component of that was review of all of the documentation in the technical data package referred to as a TDP as the day goes on.

Dominion submitted 20 documents for review…2.2 million lines of code for this testing.

ES&S submitted 55 documents for the AutoMARK, 86, 85; I'm sorry, for the DS-200 and 3.3 million lines of code for that software testing.

Hardware tests were conducted on all of these systems by a SysTest subcontractor.

Those findings we do have.

There were 101 requirements tested using 96 test steps for each vendor.

>> DOUGLAS KELLNER: At the beginning of the meeting we talked about the source code error that had been discovered in the pre-election testing and the general election for the Dominion ImageCast.

You know what I'm talking about?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: Has that source code error been addressed in the testing process?

First of all, was it discovered in the testing process... in our certification testing process initially or was it overlooked in the testing process?

>> ANNA SVIZZERO: That test had not yet been conducted by SysTest.

It really was a discovery of our pre-election testing which made us comfortable in that regard.

The source code was amended. We did permit Dominion to submit that additional line of code.

It was reviewed by the SysTest Labs and incorporated into the certification version that you have before you today.

>> DOUGLAS KELLNER: That occurred the week after the election.

So we did not allow that line of code to be used in the election before the test?

>> ANNA SVIZZERO: No new software was provided to any of the counties prior to the election.

>> DOUGLAS KELLNER: But the system we're certifying today includes that additional line of code.

So that issue has been addressed?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: All right.

Now, 6209.6(d)(2) provides for a functional configuration audit.

It goes on at some length in defining how that functional configuration audit is to work.

Would you tell us just what you've done to confirm compliance with that section?

>> ANNA SVIZZERO: We had 14 test cases that tested the 1,043 requirements that are involved in the functional testing.

NYSTEC's review of these test cases, however, determined that had the tests... did not exercise as we had received them from SysTest...did not exercise all of the system functions that were of concern to New York.

The recommendation of NYSTEC was taken very seriously and ultimately those 1,043 requirements were addressed by adding additional steps which numbered 4,734, for this test protocol alone.

This is a result of the review by NYSTEC and because of that significant finding in the test process which we expect would have affected all labs doing testing to the '05 guidelines, we submitted NYSTEC's analysis and the report to the EAC.

They immediately made it available in their clearing house for anyone in the public including labs in other jurisdictions that proceeded with testing.

We have monitored that somewhat in the media and have noted that that report that NYSTEC produced on our behalf has been cited elsewhere around the country by election administrators as being very helpful to them as they consider their own systems.

>> DOUGLAS KELLNER: All right.

Now, then, also under that paragraph dealing with the functional configuration audit, that is listed of vendor responsibilities with respect to the application process and it requires the submission of technical data which includes copies of all procedures used for module unit testing and the audit procedures.

Has that technical data package been submitted and reviewed?

>>BOB WARREN: Yes, it has.

We received the TDPs all along the way with all the updates that would occur as testing took place and we had the final TDPs and all the information is available within them.

>> DOUGLAS KELLNER: Mr. Warren, how extensive is that technical data package submitted for each system?

>> BOB WARREN: Each vendor provided a very detailed TDP.

They both did it in slightly different ways.

ES&S broke theirs out into subsections so they have many more documents, if you looked at the number of documents.

Dominion incorporated those into larger documents.

They are both very extensive.

They explain in detail how their systems were developed, how they are configured with flow charts, code analysis, QA process and everything.

>> DOUGLAS KELLNER: Part three says that there has to be a physical configuration audit which is an examination of the software configuration against technical documentation to establish a configuration baseline for approval.

You want to explain that process?

>>:BOB WARREN: That process took place again using the information provided within the TDP along with SysTest doing the code review and subcontracting with a company called Citadel which did additional source code review.

All of that process was followed up with the information being provided to NYSTEC who had a contractor that they work with, RIVA, take a look at it and make a determination that the detailed process that should have taken place for the testing was sufficient.

>> DOUGLAS KELLNER: And our statute requires that the vendor provide the complete source code and a waiver that allows examination of that source code and use or release from escrow held by the State Board of Elections in the event of any court case that challenges the use of that source code.

Has that been complied with at this stage?

>> ANNA SVIZZERO: My serve. All the source code is here. It is locked. It is secure.

And the waivers have been executed and filed by both vendors. We have copies here.

>> DOUGLAS KELLNER: All right. So who's actually got physical possession of the source code today?

>> ANNA SVIZZERO: It's under lock and key in the building.

>> DOUGLAS KELLNER: Here?

>> ANNA SVIZZERO: Yes.

>> KIM GALVIN: We have a fireproof safe that ... (Off microphone.)

>> DOUGLAS KELLNER: What are the procedures? Who has the keys?

What are the procedures for accessing the source code?

>> ANNA SVIZZERO: Joe Burns and I have shared custody of whatever it will take to get into that escrow.

(Phone ringing).

>> ANNA SVIZZERO: You have to be very nice to both of us. We do have procedures in place for...

>> DOUGLAS KELLNER: It takes both of you to get to the escrow?

Neither of you has sole access to it?

>> ANNA SVIZZERO: It takes both.

>> DOUGLAS KELLNER: And the signed waivers?

>> ANNA SVIZZERO: Signed waivers are...we have copies here if the board wants to see them.

We have the waivers in the safe with the escrow. We have copies there as well as?

Our document retention...

>> DOUGLAS KELLNER: Okay. All right.

Now, I think in your report you mention that there were 15,024 requirements that were identified by SysTest and NYSTEC?

>> ANNA SVIZZERO: If I said 15,000, I meant 1500...if I didn't correct myself.

>> DOUGLAS KELLNER: Sorry if I misheard it.

>> JIM WALSH: Tough enough!

>> DOUGLAS KELLNER: How many test steps.

(Overlapping speakers.)

>> ANNA SVIZZERO: Test steps for each vendor, 6,730 in 26 test cases.

>> DOUGLAS KELLNER: Out of those 6,730 test steps, how many issues did we identify as potential noncompliance?

>> ANNA SVIZZERO: In regards to the 6209 regulations, we had 20 on the ES&S side and 13 on the Dominion side.

>> DOUGLAS KELLNER: That's down from something like 7,000 or so for each of them that were identified?

>> ANNA SVIZZERO: Started out with a lot...

(Laughter...)

>> ANNA SVIZZERO: The break-fix process that our process has been well known for, in that dry run process there were discrepancy reports provided to vendors daily so that they could work on those issues and whatever PRIORITY they chose.

So those fixes constantly were submitted back to SysTest which meant new TDP reviews and source code reviews.

It was an ongoing cyclical kind of process. We put hard deadlines in there.

But I don't think labs or vendors understand deadlines and maybe people think we don't either.

We did try to hold them to that so the process could be ongoing.

>> DOUGLAS KELLNER: We do conduct elections on deadlines.

>> ANNA SVIZZERO: We do indeed.

>> BOB WARREN: Some of the findings are documentation findings not system findings.

>> DOUGLAS KELLNER: I turn to you with the bottom line question.

Are any of these outstanding findings of a nature that you would question whether or not the system can be safely and properly used by voters and local boards of elections?

>>: BOB WARREN: I feel that the voting systems can be used safely within the elections.

Using, for any outstanding issues that there are with the compensating controls that NYSTEC developed, and the compensating controls on the functioning side and the testing side that NYSTEC developed, using those compensating controls, will make those systems safe to use within New York State.

>> DOUGLAS KELLNER: Anna, do you concur in that?

>> ANNA SVIZZERO: I absolutely do.

>> DOUGLAS KELLNER: Joe?

>> JOE BURNS: Absolutely.

>> DOUGLAS KELLNER: Thank you for bearing with me through that process, Commissioners.

>> EVELYN AQUILA: Thank you, that was very good.

>> JIM WALSH: It was good.

>> EVELYN AQUILA: Are you finished?

>> DOUGLAS KELLNER: If it's all right.

>> EVELYN AQUILA: Just finish, go ahead.

>> DOUGLAS KELLNER: Let me make a couple remarks here on this.

The bottom line is that no one I have spoken to who has been involved in this process, including Mr. Lipari, who was the dissenting vote on the Citizens Election Modernization Advisory Committee, disputes that these systems can be safely used by voters in local elections along with the compensating controls.

If we carefully reviewed the statute, the Board of Elections has two functions in the certification process.

The statute says that first we have to do an examination to make a determination as to whether the machine or system meets the requirements of § 7-202 of the Election Law and that that has to include a thorough review and testing of any electronic or computerized features of the machine or system.

And the certainly that thorough examination has taken place and out of the very substantial number of requirements we have, they have identified still a dozen or two remaining issues for each system, but none of those issues affect the second obligation that the Board of Elections has under the Election Law which says such report shall state an opinion as to whether the kind of machine or system so examined can safely and properly be used by voters in local boards of elections.

And, as we've heard, there is no dissent whatsoever from the opinion that with the compensating controls recommended by NYSTEC and SysTest, that the systems can be safely and properly used by voters in local boards of elections.

On that basis, I concur in the drafted resolutions that will provide for certification of these machines and that, with the few issues that remain outstanding, we continue to work with the vendors to pursue the object of getting full compliance.

Now, some people might ask the question, "Well, if you're finding that there are still some issues that are out of compliance, why are you going ahead and doing the certification?"

The answer to that is that this is an extraordinarily complex process and that the issues which remain are relatively minor punch list items.

I liken this to the construction industry where if you've contracted to buy a new house and your contractor has built the house and you need a place to live and you're ready to move but there are still a few items that are left open that really don't affect your ability to live in the house, you go ahead and close any way with a punch list.

So if the garage door is supposed to have an automatic locking device on the garage door and the automatic locking device doesn't work, it's a perfectly adequate compensating control that you get out of your car and manually turn the key and lock the door.

It does not affect the safety of your garage.

It does not affect the operation of the system.

But it still is something that needs to be corrected.

And the kinds of items that remain, most of which are technical security and documentation issues do not affect the ability to safely and properly use the system.

Therefore, I think legally we would be incorrect to…well, we are legally required to make that finding.

We all agree that is a proper finding. So our resolutions provide for that.

On the other hand, we do have these very few items that remain and, in keeping with our thoroughness of this process, we are not going to let up now even though everyone would love to say we're all done.

We still have these few items to follow up. So, to that end we have been circulating draft resolutions.

There are three resolutions that separately provide for the certification of the Dominion Democracy Suite System that includes the ImageCast ballot scanning device, the Election Systems & Software Unity Suite 3.0 Voting System, which includes the DS-200, and the Election Systems & Software AutoMARK voter assist terminal ballot marking device.

I'm just going to read the "be it resolved" of each of those.

They are the same in each resolution, which is, "now, therefore, be it resolved, that the Commissioners of the State Board of Elections hereby certify, in accordance with Election Law § 7-201, that the voting system with the recommended compensating controls can safely and properly be used by voters and local boards of elections and in elections under the conditions prescribed in the federal election law and the federal Help America Vote Act."

There is a fourth resolution where the "be it resolved" provides that, "therefore, be it resolved, that the Commissioners of the New York State Board of Elections direct that the Election Operations Unit review with Election Systems & Software Inc. and Dominion Voting Systems the findings of noncompliance and, where applicable, prepare a schedule for their prompt remediation."

So I move those four resolutions.

>> JIM WALSH: Do we have a second?

>> EVELYN AQUILA: I'm going to vote in favor. I want to say one thing. I would like to thank all the people who worked so hard. Of course, Anna and her whole staff and most of our staff here who pitched in. The counties that took care of the pilot program...I think that they were resourceful. I think they had courage and fully, you know, submitted themselves to do a good job and they did it. I

would like to thank the citizens committee. I would like to thank Assemblywoman Lifton and there are several, several wonderful people on that committee. I can't call them all, but Bo Lipari who did a good job. Even though he didn't agree but brought a lot of discussion and light to the whole process.

We had our four county Commissioners who participated and did a great job.

We had I think it was Mr. Jones, Gregory Jones from Commission on Quality Care and Advocacy for People with Disabilities.

We had the managing director of the Gay Men's Health Crisis.

So we had...and Bob Brehm, who also, and Todd Valentine.

We thank them all for all that they did.

I'm leaving out names, but we'll circulate this list if anyone is interested.

One more thing before I cast my vote.

I want to tell, so maybe he'll rest a little, Commissioner Peterson, that I also love the lever machine but, every year on Election Day and on Primary Day, I go around just to different counties to different voting precincts and half of them you go into you hear, "Oh, those people are on paper ballots. We're waiting for the mechanic to come and fix the lever machine."

Every county has a couple of mechanics on standby who are called out immediately to fix our dear old lever machines the while we go into the new age of these electronic and ballot marking devices machines, don't be afraid because we have done it before.

They have been shut down and the paper ballot has come out and everybody voted and everything went right.

So I think we have a better machine.

One that in no time people will be saying as they did in the pilot program, we love this machine.

It is so quick. It is so easy. We are going to find out all of those things. New York State is the best.

We are the Empire State and I'm proud to cast my vote in favor today, thank you.

>> JIM WALSH: Thank you, Commissioner.

>> GREG PETERSON: Just before I vote yes. I was thinking about this.

You know, in the years of preparation and the work and the planning and the testing and going through all of this, it was reminiscent of the movie "The Candidate" with Robert Redford, when he won and sat in the back of the limo and he goes

"What do we do now?"

I vote aye.

(Laughter...)

>> EVELYN AQUILA: Very good.

>> JIM WALSH: Speaking last makes it more difficult. The things that I was going to say have been said.

I want to throw congratulations to the 47 counties that participated in the pilot. That took a lot of courage. You were really gambling that that was going to work. And it did. Really, they deserve a real round of applause for themselves. I thought it was very wise and courageous of them.

Now that I hear what great machines they are, I believe I might have won that election!

(Laughter...)

>> JIM WALSH: Those darned lever machines.

>> EVELYN AQUILA: No audit trail on that.

>> JIM WALSH: I vote yes.

We are approving the resolution.

Second on the resolution?

6209?

>> ANNA SVIZZERO: Commissioner, can I say something before we go past voting machines?

>> KIM GALVIN: And I would I like to say something just briefly. Sorry, Anna. It's hard for...

I know that it is out of line for a staff person to speak out on an issue of this magnitude.

Usually, we have a unit head or deputy that can speak about extraordinary work by members of the staff.

Bob Warren and Anna certainly have exhibited a level of dedication and commitment to this project that should be recognized by all of us at a staff level.

As somebody said yesterday, "Face the dread."

Well, Anna faced the dread head on, day after day. And the dreaded machine meetings have...they are not over, but at least they subsided for awhile.

I wanted to add my true congratulations for a job spectacularly well done.

(Applause...)

>> ANNA SVIZZERO: Why, thank you.

Mutual admiration society.

I was going to say on behalf of the unit, there's been a lot of moral support in the building.

Even if they only brought us a bottle of water on their way out while we were struggling with these things, it was much appreciated.

Kim was my deputy for a short period of time. She got into voting machines.

I don't know if it was punishment or promotion, but she moved on to Special Counsel's office and became "Of Counsel" to the Election Operations Unit because there wasn't much we didn't do without her input.

She had a good handle on the issues we were dealing with and Bob Brehm as well.

They brought some refreshing -- Bob was it in it much earlier than Kim and for a lot longer -- it was those two fresh sets of eyes on this process.

Poor Joe, I think, was shell shocked. We were so far into it; it made it difficult to be heard.

You certainly could raise your hand and ask a question in our meetings, but unless you yelled it out, you weren't going to get your hand recognized.

I think we all worked very well.

There wasn't much that we didn't argue about, but the moment we were done we didn't move on to other things.

I think it really was.

If we could bring Bob down to the second floor, we could say it was an entire second floor project.

Everybody was very helpful in their own ways and I don't think we could have done it without that kind of support and the support and patience of the Board.

We came to you with late resolutions, with new problems and all sorts of things.

You were patient with us and helped us navigate those difficult waters.

We are happy we are at this day and happy to be able to move forward and I just wanted to thank you again all for your support.

Thank you.

>> JIM WALSH: Thank you, Anna.

I do want to mention that all four resolutions were included in that one that we just voted on.

They have all successfully completed.

Commissioner Kellner?

>> DOUGLAS KELLNER: All right.

So the last item in dealing with voting machines, I should preface this by saying that the vendors also deserve congratulations that they really do have the two best systems on the market.

They are vastly superior to all of the other ballot scanning devices on the market, particularly because of the feature that takes digital images of the ballot and records those digital images, but there are also many other features of the machines that really do separate them from the others that are on the market.

Nonetheless, we still have this one little problem with the vendors which is that our regulations provide for transparency of the certification testing process and we do want to release as much of the certification testing documentation as possible.

Basically under our regulations we make two exceptions.

One is for security procedures that would be jeopardized by publication of the information and the other is for truly proprietary information on the part of the vendors.

We've asked the vendors what documents should be exempted from disclosure and the responses are that the vendors want everything to be held confidential.

I think that the responses from the vendors are substantially overbroad.

Under the Public Officers' Law there's a procedure where we need to make a final determination of what we believe should be released.

Then we have to provide formal notice to the party providing that information that we are going to release it so that they have, I believe its seven days to go into court to get a court order to prevent us from making those disclosures.

So in keeping with our goal of complete transparency here, I would make a motion that we direct the Election Operations Unit to make a final determination of the information that we propose to release publicly and to work with the Counsel's office to formally notify the vendors under Subdivision 5 of § 89 of the Public Officers' Law that we are going to release those documents.

>> JIM WALSH: May I have a second?

>> GREG PETERSON: Second.

>> JIM WALSH: On the question?

(All members responded "aye.")

>> JIM WALSH: Opposed, Motion carried.

We will take a break now so everyone having to get back to offices and business, and we need a break for break's purpose and we will be coming back.

>> AUDIENCE: Is there no time for the public to comment...

(A recess was taken.)

Permanent Regulation Part 6209.2

>> JIM WALSH: Back in session. All right, everyone, we are back in session. We will go to new business, vote on the final adoption of. Regulation Part 6209.2?

>> DOUGLAS KELLNER: So moved.

>> GREG PETERSON: Second.

>> JIM WALSH: All in favor?

(All members responded "aye.").

>> JIM WALSH: Carried.

Amendment to Contract #C002852

Vote to approve an amendment to Contract # C002852 for certification testing of voting systems by SysTest Labs, Inc.

Do we have a motion?

>> DOUGLAS KELLNER: So moved.

This is necessary just to do the money to cover the costs.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Opposed?

Carried.

Discussion of 2010 Legislative Package

Discussion on proposed 2010 legislation, Kim Galvin, Paul Collins.

>> KIM GALVIN: As I see new proposals coming across, I've had it copied and I'll have a draft and legislative proposals at the next meeting.

>>JIM WALSH: We will return to our original agenda order.

Approval of Minutes

>> JIM WALSH: Minutes of the November 10th meeting.

Can we have a motion to approve if there are no corrections or deletions?

>> DOUGLAS KELLNER: So moved

>>JIM WALSH: Can I have a second

>> Second

>> All in favor Aye

(All members responded "aye.")

Unit Updates

>> JIM WALSH: Unit updates have been submitted. If anyone has any questions, this is the time to bring them up.

Otherwise we will proceed. Hearing none,

Old Business: Amendment of Regulation Part 6210.18

Old business, vote to amend post-election audit proposed regulation 6210.18.

Do we have a motion?

>> DOUGLAS KELLNER: This is the revisions that you proposed?

>> TODD VALENTINE: Yes.

>> DOUGLAS KELLNER: They are fine with me. We can start the publication.

>> EVELYN AQUILA: You want to explain anything, Todd, on that?

>> TODD VALENTINE: Only if you have questions.

>> EVELYN AQUILA: Okay.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>>Opposed, Carried

Discussion of Opinion on Village of West Hampton Beach

>> JIM WALSH: Discussion and proposed opinion on the Village of West Hampton Beach?

>> DOUGLAS KELLNER: Let's lay that over.

>> EVELYN AQUILA: That needs discussion.

New Voter Registration Form

>> JIM WALSH: Discussion of proposed revised voter registration form?

>> DOUGLAS KELLNER: Ready to go?

>> BOB BREHM: John was going to lead our conversation, but he's busy in the hallway right now.

>> TODD VALENTINE: I think the answer is yes.

>> DOUGLAS KELLNER: We all looked at it. It's a lot more user friendly than the old form.

>> TODD VALENTINE: We talked about it in the past and I will go into a little bit of background.

>> DOUGLAS KELLNER: Here is John.

>> TODD VALENTINE: I don't want to steal his thunder.

(Overlapping speakers.)

>> JOHN CONKLIN: Well,

>> TODD VALENTINE: Do you want to...

>> JIM WALSH: Registration form...

>> TODD VALENTINE: Want to say anything on that?

>> JOHN CONKLIN: Well, the initial idea for this was we had to deal with the organ donor registration obligation that the legislature put on us.

We decided it was a good opportunity to maybe look at the form in totality, make it more voter friendly, user friendly, and so we have had a consultant take a look at it.

They've done focus groups, usability analysis. This is our end product. It has been reviewed by the county Commissioners. They made suggestions. We incorporated as many of them as we could.

Some of them were on areas of the form that were either dictated by statute or dictated by agreements between both sides of the building about text and things like that.

So this is our final product at this point.

>> EVELYN AQUILA: Looks good. Really looks good.

>> JIM WALSH: Further questions?

>> EVELYN AQUILA: It's still folded?

>> DOUGLAS KELLNER: I move we approve the form.

>> JIM WALSH: Second?

>> GREG PETERSON: I second.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Carried.

Set the date for the next meeting.

I cannot make the 12th.

13th or 14th of January a possibility?

>> GREG PETERSON: Twelfth is a Tuesday.

>> JIM WALSH: I can't make the 12th.

>> DOUGLAS KELLNER: Evelyn?

>> EVELYN AQUILA: What?

>> DOUGLAS KELLNER: Thirteen or 14th?

>> EVELYN AQUILA: The 14th is better for me, of course.

>> DOUGLAS KELLNER: Okay.

>> JIM WALSH: Fourteenth?

>> EVELYN AQUILA: Wednesdays are always bad.

>> KIM GALVIN: We will perhaps have the outstanding issue.

(Overlapping speakers.)

>> KIM GALVIN: Because of the counties that haven't chosen their machines, we'll have that issue we need to discuss.

>> JIM WALSH: Fourteenth.

>> EVELYN AQUILA: Fourteenth, good. If there was a problem, I could change if I have to.

>> JIM WALSH: Okay. Any need to go into executive session to discuss our cases?

>> DOUGLAS KELLNER: I'm prepared to move the list.

>> JIM WALSH: May I have the motion?

>> DOUGLAS KELLNER: I move that we adopt the reports submitted by the Enforcement Unit.

>> JIM WALSH: May I have a second?

>> GREG PETERSON: Second.

>> EVELYN AQUILA: Aye.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Opposed?

Carried.

Motion to adjourn?

>> DOUGLAS KELLNER: Moved.

>> EVELYN AQUILA: Second.

>> JIM WALSH: Great, we are adjourned. January 14th. Thank you all.

>> DOUGLAS KELLNER: That's all.