

New York State Board of Elections
Commissioners Meeting
April 5, 2018

Peter Kosinski: Welcome everyone to the Meeting of the State Board of Elections here on April 5th. I'm Peter Kosinski. To my right is Commissioner Doug Kellner, to his right is Commissioner Andy Spano and to my left is Commissioner Greg Peterson. We have before us, to begin the minutes of our meeting of March 1, 2018 I would entertain a motion to adopt?

Douglas Kellner: So, moved.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? They're adopted. And we will now move on to unit updates and the first unit is Executive Unit Bob Brehm and Todd Valentine.

Todd Valentine: As you may have heard, the state budget was adopted. Obviously our budget was adopted and included in that, and Bob will go into more details on this, was the authorization to spend the substantial federal money that we're anticipating to get to help us develop cybersecurity as well as a small piece of state money to augment that effort as well and what would expect to come back and we've been working on developing a plan for months at this point in time. We will go into detail in the future but basically it's to assess the situation for the Counties, provide remediation for any issues that they have, monitor their ongoing operations, and then had some kind of a response capability when something does go wrong, because things do happen. So those are the four pieces of the puzzle that we're putting together, and we've been consulting with the State Office for Technology as well as our own State Department of Homeland Security. Several representatives have been at the meetings as well as the Governor's Cybersecurity Advisory Task Force as part of that. So, we've had discussions and now we've actually included the Division of Budget has been part of this for working on the plan. And again, as the federal money, just to remind you very quickly and Bob will go into details, is that we'll require when we go to the point of making the expenditure, the Board will have to approve those because it's part of that it goes into our existing HAVA account. So, we will have a more detailed plan for you at the next Board meeting. A small piece that was also included was an addition of Supreme Court Judges. That doesn't affect us directly except for those are offices that we oversee that will be on the ballot this fall. We assume at some point the Office of Court Administration will certify those vacancies to us, but we know in statute that's coming up to occur. And they added judges in the 9th, 10th, 11th, 12th, and 13th judicial districts. And a more troubling piece of the puzzle, that came out late, was the piece regarding digital advertisements and capturing those. It puts a substantial burden on the State Board to define what it means. They left an unusual term for "online platform" which requires us to define it and give some very broad parameters as to what to include in that which will be problematic, and our Counsels' office has been meeting to try to come up with that. But it also puts a very strict timeline that we're supposed to at least have regulations in play within 120 days for those Independent Expenditure Committees that engage in what they call Digital Ads to be able to provide to us copies of those ads when they make their weekly or sometimes 24-hour reports as they get closer to an election. But it also puts a burden on whoever the online platform is to have a copy of the Registration document that the Independent Expenditure Committee has. So, while

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legally that's being challenged, getting the regulations together to get that done is one aspect of it, but also adding to our database to collect those ads. Because while we collect them now we don't collect them until the end of the process in the 27-day post-election filing. This would increase that to a level that we were not quite prepared to do at this point, and since we're in a critical phase of developing...

Peter Kosinski: Todd explain that to me a little bit. It will increase our what? Frequency with which we have to make a filing?

Todd Valentine: Frequency of those filings on a weekly and in some cases a 24-hour period. So, it means having the database ready and able to accept them and make them available publicly. Because right now when the ads come in they're available publicly, but they're not posted online because of the nature we get a lot of political ads, they don't lend themselves being posted online. They're often printed on t-shirts, coffee mugs, hard items that can't really be posed. So, if you want copies they can come and get them, they're available but not available online just because of the nature of them. Because these are digital ads, the statute requires then to be posted presumably on our website. It's not specific as to the location of that but presumably. So we would have to have an accessible format of whatever is posted because we still have to meet our accessibility requirements for anything that's posted on our website and so we'll have to put into our regulations, here's the format, you need to provide it to us in order for us to be able to post it electronically. And that's not necessarily the way that they submit the ads. So, it's going to be a significant challenge. I will be honest; the deadlines are a little unreasonable. Certainly they're aware of that but it's been wanted in time for this election and you'll hear more complaining from the staff about that as we go forward, but we're going to do the best that we can but I can't guarantee those tight timeframes, and at this point, I don't know what it's going to look like.

Douglas Kellner: But Todd isn't the point then to at least get emergency regulations in place, put them out for public comment and then perhaps the public comments will give us additional resources in order to prepare the permanent regulations?

Todd Valentine: Oh, no definitely that's what we're shooting for is to get a regulation, something to you by the next Board meeting because this just happened last week so we can't just write it in a week. We're good but that's a little unreasonable. But that would be our goal to do that. But when you talk about the resources that is also what's missing. There is no additional funding to help augment our FIDAS system. We didn't get any additional dollars to do that and that again, we're in a strategic phase of that and this obviously would be some change to that program.

Douglas Kellner: Yeah \$20 million of HAVA money....

Todd Valentine: That's a good question whether it can be used for that because it's not for, these would clearly not be applicable to a federal election so whether that would be a permissible expense funded by the EAC we don't know yet and again, Bob can go into this, we're expected to get a quick briefing on the expenditures this afternoon but that's something we would have raise. Maybe pieces of it could be used if its ancillary for the expenditure and that is a reason it's

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been acceptable to them in the past. But, again, this is not for federal elections. Purely not for federal elections.

Douglas Kellner: And it's not part of the actual voting system, it's more of a finance disclosure system.

Todd Valentine: Right so that's where that lack of funding would be a problem.

Peter Kosinski: So, we should expect to see something at the next meeting to try to implement this?

Todd Valentine: That's what we're expecting, yes.

Peter Kosinski: Okay and I guess in the... Bill your section is going to have to be... you're going to talk about this during your segment?

Bill Cross: What I can to at least be descriptive.

Kim Galvin: Yeah, he will.

Bob Brehm: Actually, I think it's more at the Counsel's level yet from our perspective. Counsel's meeting to make sure that they give us the business rules and then meet with Bill. So, I think it's a little early for Bill to comment because it's still at the Counsel level and then they will meet with Bill to make sure that he understands what they think the business rules are, so he can start designing a response. So, I think Bill's is a little too early yet.

With regard to the federal money, it was a surprise to all of us that there was ever a discussion of more federal money. It kind of came out at the last minute. We did succeed in getting information. It kept modifying as we went as to what the level of funding could be but also get the authorization to at least receive this federal money and to spend it. It's about \$20 million. It's a little under \$19.5 million of federal money which requires a 5% match which is just under a million dollars. Luckily, when we modified the state HAVA plan the last time we received federal money in 2009 -- it's a lot of work to modify the plan -- we anticipated if Help America Vote Act was fully funded to the \$3.6 billion level that they authorized originally, so when we modified the plan in 2009 we put in there the potential that we could get additional federal funds and how we would treat them. So, we don't have to amend our state plan, at least I don't believe so. We're going to confirm that later this afternoon. So that at least puts us at the head of being able to receive the money and get ready to spend it on items certainly security-related programs. They weren't identified quite the same in 2009 or 2002 when the law was first passed but certainly the authorization in the federal budget allows it to be used for security-related purposes. So, implementing our state Cybersecurity plan that we had been working on anyway, most of that, if not all of that would qualify for federal funds in that expenditure. So, the budget did specifically reference the 5% match as the state \$5 million that is in the budget for Cybersecurity specifically identifies it's a plan to be approved by the Commissioners and that we'll to the extent that we need a million of that 5 million will count towards the State's 5% match for the

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federal money. So, we believe we have the match covered. It's just a matter of when the Federal Election Assistance Commission gives us the login in order to apply for the money. So, if we must amend the plan we already have the 5% match covered even though the federal law gives states until next year to come up with the 5% match because in many states its mid budget, they have to have a period to actually come up with the 5% match and put it in their state budget. We should be able to have the money right away. The federal law said it needs to be available to the states within 45 days of being enacted and tomorrow is day 14. So, we have seen a pretty quick turnaround from the Federal Election Assistance Commission. They sent us a letter identifying the amount of money and they have a call with all the states this afternoon to do a Q&A on how to access that money. So, you know, we will spend it with your vote of authorization same as we have all other federal HAVA money and we hope to have a plan to you. I don't know that we'd have a plan to spend all of it but certainly a plan to get started on the higher priorities of that.

Peter Kosinski: So, you're expecting Cybersecurity to be the primary use of money?

Bob Brehm: Well our budget ask was \$15 million already. We have 5 at the state level so it's a substantial number of that if we used it, we could use it for that purpose. So, I think at least a good portion of it would be part of what we...

Todd Valentine: Well it's not just depending on us it's also supporting the counties. They will be benefitting from it as well because there's certain activities in order to make sure that its done in a uniform manner and not making the counties pay for it, we should be able to help them. Risk assessment for example. If we're looking at monitoring services that the state will pay for that and we benefit from it but so would the counties as well and yet they shouldn't have to bear that burden.

Peter Kosinski: New voting systems are those eligible.

Bob Brehm: Certainly, the existing authorization would allow voting systems. The authorization of the budget gives the money to the State Board of Elections. If you were to allocate it to the counties we would just have to come up with a way. There's no allocation formula in there. It doesn't mean we couldn't...

Douglas Kellner: So, it's my understanding that we could use the money for new voting system equipment or other if we wanted to. That would be a determination...

Peter Kosinski: No, I understand. I'm just trying to understand what's even eligible.

Bob Brehm: The language in the federal bill keeps all of the pre-HAVA eligibility. Anything you could buy before you could buy now. It expanded and made clear you could hire people to do Cybersecurity. You could hire people, you could hire contractors, you can do security related things with money to make elections secure. I don't know that that was, it wasn't identified in the earlier rounds of HAVA, but it clearly is identified now in the current version.

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Douglas Kellner: And there are advocates who are saying that money should be used for audit process which would be eligible too.

Peter Kosinski: But you're going to bring us a plan then for the use of the money?

Bob Brehm: At least to get started.

Peter Kosinski: At the next meeting is that your expectation?

Bob Brehm: Yes.

Peter Kosinski: Okay. At least part of the money not necessarily all of it.

Bob Brehm: Correct.

Peter Kosinski: Okay. Anything else that you guys have to report on?

Bob Brehm: We had the death in the 25th Congressional District for Louie Slaughter so we certified that vacancy I don't remember the day. I'm sure Operations will probably have the date.

Peter Kosinski: There's no, there's no, is there a special that's been called there or no?

Bob Brehm: There has not been yet a special. In the 46th Senate Assembly District, we just received on the 3rd of April, the resignation from Assemblywoman Pamela Harris and we certified that vacancy also. The vacancy was effective April 2, so the Public Officer's Law does not provide for a special election unless an extraordinary session of the legislature is called for. So those are the two vacancies that don't have a special. Of the 11 that are, they get to have a special on April 24th that we are working towards.

Peter Kosinski: Anything else?

Bob Brehm: Nope.

Peter Kosinski: Any questions? Alright then we'll move onto Counsel, Brian Quail and Kim Galvin.

Kim Galvin: Thank you Commissioner. I don't know if we talked about this last time, but the September state and local primary was moved from September 11th to September 13th. That's just an FYI. With regard to the regulations, our post-election audit regs that you voted on will be published on April 11th. The regulations on candidate websites will be published on April 11th and the special federal voter regulations became fully effective on March 28th. We've done the normal work of the unit including the compliance reviews, filling FOILs and subpoena requests, calls, etc. There's been an increase in some committee terminations post-election in the local year. We've attended the CAPAS-FIDAS NYSVoter meetings. We also had a set of specific

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objections to work get us back into the flow of that in the 102nd Assembly District that you'll be voting on later. With regard to litigation notes, a decision was handed down last week on both LLC cases maintaining the status quo there and "Eason" which is the website availability case the trial is set for May. We're still in negotiations. And "Merced" oral arguments were held. "Merced" is whether or not an out of state a person can be a witness to an independent nominating petition. Oral argument was held on March 29th on competing motions for summary judgment. What is important here could potentially be is that decision would fall somewhere in the middle of our independent nominating petition periods...

Peter Kosinski: Which begins when?

Brian Quail: June 19th I believe for the federal?

Kim Galvin: Oh yeah, I was thinking August for the other ones.

Peter Kosinski: So, the federal is in June?

Brian Quail: I believe so yes.

Peter Kosinski: And this would impact federal offices as well as state and local?

Kim Galvin: Potentially all.

Brian Quail: Yeah, all independent nominations.

Bob Brehm: Feds go first because of our calendar.

Peter Kosinski: Yup, okay.

Kim Galvin: There was also a litigation of note that we were tangentially involved in regarding the Independence Party authorization in the 37th Senate District, that's the upcoming special. That went up on appeal in the appellate division last week upheld the lower court determination that the Independence authorization was invalid. I was going to talk about the regulation regarding the ads and the IE committees but I think Todd did a nice job on that other than the fact that I will repeat it again if I missed him saying it that the State Board of Elections has been tasked with defining "online platform" for creating a definition that captures these entities for this new regulation which is interesting to me who has difficulty signing into my cell phone on numerous occasions, but we are anticipating there will be a great deal of interest in our definition and many people have already reached out to us asking to come sit with us to talk about that specific issue. So, I wouldn't be surprised if the Commissioners also receive calls from people that may or may not want to describe what they feel should be or should not be covered in the bill.

Peter Kosinski: So, if I'm an Independent Committee then and I put an ad up on YouTube promoting a candidate, I then have to submit that to the Board here as well?

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Kim Galvin: Yes.

Peter Kosinski: Within a certain time period?

Kim Galvin: Yes.

Peter Kosinski: And then we have to post that video?

Kim Galvin: Well we have to post whatever it is that we require them to post. It's unclear whether or not it requires the digital advertisement itself to be posted or in certain circumstances just the transcript of the ad. We were working through this in a meeting yesterday and there's a lot of logistics that need to be...

Douglas Kellner: Could this have the effect of us becoming the new YouTube?

Kim Galvin: Hopefully not. Hopefully no one is that interested.

Douglas Kellner: Every ad that gets posted is now linked in our website?

Kim Galvin: Well it's interesting because there are 79 I believe is the number, is that the number?

Brian Quail: That is correct.

Kim Galvin: ...Independent Expenditure Committees currently filed. So, basically the whole world that does ads and broadcasting needs to be made aware of what they are. There are some simple requirements on them to accept the forms that are filed with us. Then the Independent Expenditure Committee must provide us with a copy which we must post and keep up for 5 years, which is an interesting number since the cycle is 2 or 4 in this particular state. And so, we're trying to work through a definition of "online platform". A definition of what would actually constitute the ad. It says "machine readable" in the bill itself which, well for me I found a lot of definitions of what that meant, and in addition we're being sued on accessibility, so we would need to make those accessible as they went up. So, it's unclear to us.

Douglas Kellner: If the initial ad itself is not accessible would we have to do the modifications to make it accessible?

Kim Galvin: Well the question is, do we require that the IE's provide them to us in accessible format? And then still we're going to need staff to run a check to make sure that they are in the 24-hour cycle to make sure that when they go up they are accessible and there's no money given to us for this particular project. The regulation has to be effective within 120 days which are virtually today because they go out for public comment for 60 days and then 30 days after the effective date, the system has to be up and running. So, it is a handful of things, a big handful

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that we have to get our minds around. Not to mention that it's in the middle of the state and local primary filing petition section that all this becomes effective.

Douglas Kellner: Where Counsels doing all that...

Bob Brehm: ...July...It's out 120 days...

Douglas Kellner: So, in the timeline, we would not need to adopt emergency regulations at the next meeting?

Brian Quail: No, in fact, I'm sorry...

Kim Galvin: Well, I mean we worked through the time line, Brian particularly, and Nick and there is a path that we could get it done in the regular process and then if we fell behind, we could adopt an emergency regulation as a placeholder until the comments were in and the original regulation was deemed done or finally adopted by you.

Brian Quail: One of the issues here is we do not want to be early and obviously, we do not want to be late, we want to be just on time. Because one of the unique things about this legislation is that its effect date is triggered to the effective date of the regulation and we would want to take as much time as we can because we have the IT issue of having the system up and ready and that system has to be up and ready if within 30 days after the regulations are promulgated and we're given 120 days to promulgate the regulations. So, in an ideal world we would promulgate the regulation on or about 120th day so that we would end up with a total of 150 days from when the bill was signed in order to put the whole system up and running and being functional. We got ahead of ourselves in promulgating regulation we would be cutting our time back. But the good news is, as Kim said, is that we are able to, if we put a draft out there for people to comment on, if we ended up needing to do revisions, we have confirmed with people who do this every day that even after starting the regular process, we could intervene with an emergency that could take effect on the right day and then continue with the republication process for final adoption which could then extend out an additional three months or even longer if necessary.

Andy Spano: Does this apply to only ads with the candidate's name or related directly to a candidate? Or how about issues directly related to a particular candidate?

Brian Quail: The standards related to the timeframes did not change. So, what this does is in order for it to normally to be an independent expenditure it has to reach 500 or more general public audience. With respect to digital ads it shrank the reach down to 50 and what it also did is its requiring the weekly filing with us of reports for any purchase of digital ads that more than \$500. So, for other IE's its \$5000 on the weekly for this its only \$500.

Kim Galvin: And within 24 hours the \$500 kicks in as well.

Brian Quail: And actually, only the 24-hour period did change but they put the \$5000 expenditure in the 24-hour report now. Cause under the current law, originally the legislature

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did this they have \$5000 and \$1000. \$5000 expenditure and \$1000 contribution reported. The last time they amended the law they changed it so in the 24-hour period there was only the contribution, \$1000 contribution to an IE being reported, they put the \$5000 back in the 24-hour reporting as well but that only applies within 30 days of the election.

Bob Brehm: For an expenditure.

Brian Quail: For an expenditure, excuse me. So, it makes a lot of changes throughout the IE statute that are just pretty rudimentary changes to the regulation and then having a plan to inform the regulated community about what the new rules are. And Kim has very aptly described the complexities associated with the new parts with the digital ads and putting up an online database of those. I would underscore what she sort of mentioned as sort of my mantra is that there's some tension in the definition because it talks about putting them up in a machine-readable format and by its nature, images and videos and audio recordings are not able to be machine readable. I'm not sure the legislature intended that the actual ad be made available as much as they wanted disclosure of that the ad was made, and you compare the money to the ad itself. Normally, with political communications that are digital or audio under the current digital framework, when they're filed post-election, we take scripts for audio and visual communications.

Kim Galvin: Right, and also keeping in mind that all of these things would have been disclosed anyway.

Brian Quail: But this speeds it up.

Peter Kosinski: So, the goal here is that when you get the weekly report from this Independent Committee showing expenditures, you can connect those expenditures to a specific set of ads that were put up by this committee?

Kim Galvin: Right, but the ads themselves are all required to have attribution so that when you read the ad you know what committee did it.

Brian Quail: I guess that is true.

Peter Kosinski: I'm trying to understand what this is trying to address...what's the problem this is trying to fix?

Brian Quail: The database applies to digital and online ads and so for reasons that the legislature obviously desired more transparency and disclosure in that particular area, I'm purely guessing because there was no memo that came out, so, there is a dearth of legislative history, but I think what we're hearing in terms of the Facebook issues and sort of concerns about essentially anonymous or un-trackable spending in some of these platforms, apparently the legislature believes creates unique issues that require additional disclosure.

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Kim Galvin: But it's only applicable to the Independent Expenditure Committees, not a political committee. That's where we are on that.

Douglas Kellner: So, the timeline is that we will be presented with a draft of the regulations at the next meeting which is in the first week of May, as I recall.

Kim Galvin: That is our goal, yes.

Douglas Kellner: And then but we will not adopt them, we're not intending to adopt them as emergency regulations at that time. That they'll be...

Kim Galvin: Right, not at that time.

Douglas Kellner: They'll be sent for publication and then public comments can be submitted but...

Kim Galvin: And if we're running out of time, we'll have to adopt the emergency regulation to take effect to trigger the 30 days...

Douglas Kellner: And what is the deadline for adopting that emergency regulation?

Brian Quail: It's 120 days from the effective date of the legislation and I don't think we actually know...

Bob Brehm: ...LRS (Legislative Retrieval System) didn't show an update...

Kim Galvin: ...didn't sign the bill yet.

Bob Brehm: What day is chapter, would be day 1?

Douglas Kellner: It's part of the Appropriations bill...

Bob Brehm: It's an Article VII bill.

Douglas Kellner: So, if he delays the signature...

Bob Brehm: Well no budget has a Chapter number yet so.

Kim Galvin: Maybe he won't sign it.

Bob Brehm: It usually takes him a while to update LRS but.

Brian Quail: I'm sure he'll sign it.

(all laughing)

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Kim Galvin: Hope springs eternal on this side of the table.

Douglas Kellner: It was one of the Governor's initiatives so.

Bob Brehm: It's not a standalone there are other Article VII things mixed in there.

Brian Quail: It's Part JJJ. There are a lot of other things.

Bob Brehm: So, I'm sure some other part that I haven't read is important to somebody else also. We focused on the two causes also then there's the judges. It wasn't transmitted to them until the third, second or third, Monday. It wasn't transmitted till Monday.

Kim Galvin: So that's where the Counsel's office is.

Douglas Kellner: Alright, that's good then. So, if people want to influence the draft they should send you suggestions soon.

Kim Galvin: Yeah, I guess I should say that out loud I suppose. Some already have, some have mailed us a letter, certainly Brian and I and Nick would certainly listen to anyone before the draft goes out, once the draft goes out, at any time we'd be willing...

Douglas Kellner: You have a very limited time in the next month. So, the preference would be for people to send you written comments?

Kim Galvin: Right or e-mail them. They all know how to get us.

Bob Brehm: Writing is preference. I mean something in writing.

Kim Galvin: That's it.

Peter Kosinski: Anything else from the Counsel's Office? No? Any other questions? Okay then we move onto Election Operations, Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you Commissioner. So, we've been doing some work for all the elections this year for April 24th special we certified a list of candidates. As Kim had mentioned before with the new regulations on special federal voters, we provided guidance to all the county boards regarding how to treat the voters. We also ensured that for the counties that were involved in this special election that those voters were coded a way in the system so that they were able to utilize electronic transmission method that we have for UOCAVA voters. So, we made sure that the counties that were involved were able to do that with NYSVoter. We are also working with OCA just to get the list of election day judges for that election.

The June 26th primary, we had received additional nominations since the 4 we've received 3 additional ones. We received 4 at the last meeting, also, some additional documentation to

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support those things. And we have the filing period next week, so we've been gearing up for that so we're ready to go to receive those petitions and turn around all that information. For the September 13th, we've calculated the signature numbers based on the April 1st enrollments that were just run this past weekend and we've also been working with, as Kim had mentioned, the election for the primary change from the 11th to the 13th. So, we've worked with at the very least the Federal Voting Assistance Program to update some of their information that they communicate to military and overseas voters to let them know that some of the deadlines have changed for that.

And then for the general, we did prepare also earlier last month the statewide certification that goes out just to let all the county boards know the various offices that are to be filled at the general. Bob had mentioned the two vacancies that we recently certified for the Congressional District and also the Assembly. There is something later on in the agenda about ballot access rulings that cover a nomination document that had come in and also a hearing that was held regarding the 102nd Assembly District.

Under voting machines, we are continuing to work on the certification process for the Dominion ImageCast Evolution Device which is a replacement of their existing ballot marking device.

Cybersecurity, I know Bob and Todd covered a bunch of stuff. Subsequently we are continuing to work with other units in the Department of Homeland Security on developing our plan for 6 tabletop Cybersecurity Preparedness exercises that we're going to hold across the state. That is moving along. We're anticipating I believe our first one will happen sometime later this month.

We have been participating in the calls on the Cybersecurity planning and the spending that was mentioned with regard to the funds that are in the budget and also our plan for spending some of the federal funds. And last week, John, Cheryl and I attended the Train-the-Trainer conference at the Belfer Center at Harvard University in Cambridge Massachusetts. It focused on Cybersecurity Preparedness, it also tried to help us figure out how to train-the-trainers, so we could sort of plan those things internally and possibly send some of that information along to the counties.

With regard to accessibility, they had scheduled some additional trainings for staff both in just basic accessibility so that everyone can improve their ability in that regard but also I had asked all the units to select a small number of staff who could kind of be responsible for some of the content coming out of that unit and we provided them with additional security on accessibility and Microsoft word and Excel and also Adobe Acrobat and with regard to "Eason", we have been working with IT and PIO and Counsel on doing what we can to help either remediate some of the content that's on the website or make tweaks to the website itself.

And then some miscellaneous stuff, we are continuing to work with IT on the new CAPAS system. The Op staff have provided some EMS training to Madison County. We've been working on the shoebox extensions and the shoebox is a funding program for the counties to get reimbursed and we have to do some paperwork every year to extend those contracts, so we've been working on processing that. And I believe that's all I have now. Brendan?

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Brendan Lovullo: Well I'll read the one thing that's not on the paper, Mark Linderman and I finally got in touch with each other and we have a date planned for meeting up in 2 weeks I believe, the 18th.

Douglas Kellner: Great, I'm glad to hear that cause that will allow you to continue to evaluate alternatives for improving the efficiency of the New York Audit Process.

Peter Kosinski: I'm sorry who's Mark Linderman?

Brendan Lovullo: He's I guess advocate with maybe the word or something. He's interested in risk limiting audits, so he's requested to come up and meet with Tom and I.

Douglas Kellner: He's a professor at Columbia University in computer science. And then Ballot usability issues.

Tom Connolly: Yeah, I mentioned that at the last meeting, I left it off on this one only because we've been working on a couple of things so I didn't have anything new to report but we are continuing to engage the Center for Civic Design to work on the usability of a number of things and obviously the ballots are primarily but looking at other stuff as well.

Peter Kosinski: Anything else? Any questions? Okay then we will move on to NVRA PIO John Conklin and Cheryl Couser.

John Conklin: Thank you Commissioner. The PIO office or the Public Information Office has been busy since the last meeting. Routine questions about the special elections, petitions for Congress and the state legislature, federal budget, the state budget, the Cybersecurity issues, a lot of the routine questions from the press and the general public. I didn't hear Tom mention it but the 3, he and I and Cheryl attended a tabletop exercise training conference at the Belfer Center at Harvard University last week which was very useful for us moving forward as we plan to do some of those things here for the counties in New York. The unit also participated in a monthly ECA call in March. We continue to be in all the meetings on the discussions of what to do with the Cybersecurity money and the planning on how to address those issues for our board. The unit processed 97 FOIL requests in the month of March. We continue to be involved in certain preparation of materials for the lawsuits with the Counsel's Office. The 2017 Annual Report is nearing completion. I'm waiting for 3 units to provide their sections and then we should have that.

Douglas Kellner: What three units?

John Conklin: Enforcement, Counsel Compliance and Election Ops.

Kim Galvin: We're very close. We're down to one number.

Brendan Lovullo: We're closer.

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John Conklin: It's a race that's fine.

Douglas Kellner: Well and I would also say that if they're not, well.

Kim Galvin: Ours will be to him by the end of the day. We had one number we had to track down.

Douglas Kellner: And Ops?

Tom Connolly: I think that Brendan and I just have to go over the numbers, but I think content wise it's all put together, so we will try to beat Counsel today.

Douglas Kellner: And Enforcement?

Risa Sugarman: Mine is written it just needs to be reviewed.

Douglas Kellner: So, we should be ready to publish by next month.

John Conklin: It sounds like that's true.

Bob Brehm: Well we have to make it screen readable so that...

Kim Galvin: I wonder if the PIO's portion is done?

John Conklin: The PIO portion and the NVRA are done. The only thing that PIO hasn't done is the cover letter at the beginning of the report.

Kim Galvin: See, like tracking down one number.

John Conklin: But that actually is Executive section, but I end up doing it.

Bob Brehm: He does a fine job.

John Conklin: There you go. Thank you. Okay so the Election Commissioners Association has decided they're going to take back the winter conference meeting, so the State Board was making preparations for next year to do that, so we don't have to do that.

For the website we received 5 candidate websites for the April 24th special election. They've been posted on the website. We have up for public comment the final adoption of the emergency regulation for part 6215 which was in relation to publishing the candidate websites for certain offices. The webcast and the transcript for the March 1st meeting is up. And we published additional documents related to the June 26th federal primary. And lastly, the NVRA unit visited the Schenectady Board for a NYSVoter review. So, do you have anything to add Cheryl?

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Cheryl Couser: No, that was very good. I think maybe just the April enrollments were put up.

John Conklin: Oh, that's true, that's correct. So, the April 1st enrollments have been published and they are on the website. That's the ones officially required by the statute each year.

Peter Kosinski: Okay is that it? Alright. Any questions? Thank you and we will now move onto ITU, Bill Cross.

Bill Cross: Good afternoon Commissioner. I'll start with projects and turn to CAPAS-FIDAS resources is also an issue. We do remain on track for the currently development schedule but as I continue to report, we have difficulty in filling positions and obtaining qualified people. We're still looking to fill multiple permanent state positions related to the project but in order to remain on schedule as well as address some of the possible additional scope related to the online ads, we know will have some impact, we don't have all the details in terms of system requirements yet. Nevertheless, we are looking into what we may need to supplement in terms of the contractor staff to adjust the lack of filling the permanent positions and expansion of the scope. But we're still don't have details yet in terms of online ramifications.

Douglas Kellner: The last of filling the permanent positions is that because you have not found the personnel or because of clearance by other agencies?

Bill Cross: A little of both. Our postings have had little response. The response we have received we did not find qualified candidates through that process. We are also investigating with canvassing state exam lists, civil service lists. There was a delay there because the state did a new round of testing for IT positions and the new list was not out yet. What was on the old list remaining after several years would probably not be qualified candidates at that point anyways. So now if the new lists are out, we are canvassing those as well. So, there's a variety of factors that go into not being able to fill those positions. We're hopeful that the new list will provide new blood.

Peter Kosinski: How many positions are we talking about?

Bill Cross: We currently have two developer positions for CAPAS-FIDAS two different grade levels and one network support position.

Andy Spano: What kind of exam do they have to take to get on the list?

Bill Cross: Depending on the grade level...

Andy Spano: Written exam?

Bill Cross: There's a portion, they changed it recently over the years. it was originally a written exam. There's a basic qualification for entry-level positions now that you must meet certain criteria for college credits or experience and it actually ends up being a long skill set survey they fill out based on experience, education, credit, certifications, and what we do is we list, we

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essentially get that same questionnaire. We list out our requirements and then they will do a match.

Andy Spano: How do those qualifications, requirements, duties and so on compare to private sector and payment in private sector?

Bill Cross: Duties and skill sets are the same you would see in the private sector.

Andy Spano: How about the pay?

Bill Cross: The pay is not.

Andy Spano: Why?

Bill Cross: Civil Service, well entry Civil Service for IT positions there is not a realistic mechanism to bring people in at higher levels. There are levels of what you would consider grade 14 or 18 is what they have for open competitive to allow someone from the outside to join. There's lists internal for promotional once you're in, but you really have to start at entry level and bring someone in. That's the only mechanism the state provides us with.

Andy Spano: Does it have some effect on why you're not getting people?

Bill Cross: It does have some effect on that because civil service has not maintained salaries or provided a mechanism to bring people in at what's competitive.

Andy Spano: Totally unrealistic. The private sector is crying for these kinds of people. They're paying higher salaries, there's no way you can compete at this level unless you have someone very dedicated who wants to do public service. But it's not going to work.

Bill Cross: We try multiple paths to bring someone outside from the Civil Service but since we also post internally for people who would like to take laterals from other agencies and either escape where they are or look at something different.

Andy Spano: So, it inhibits the other agency.

Bill Cross: It does.

Douglas Kellner: And that's what's happened to us.

Bill Cross: But, that's how I'm here.

Bob Brehm: We've benefitted and not benefitted by that.

Bill Cross: I came over as a lateral.

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Andy Spano: Been there, done that.

Bob Brehm: The state did look to identify a certain number of positions in the whole budget that would allow agencies to go when they can't fill that would allow us to go out into competitive, but I haven't heard if that passed. They discussed it two budget cycles.

Andy Spano: But not with more money.

It would allow us to go outside of the traditional entry level...

Bill Cross: Entry level....

Andy Spano: Bring them in at a higher level.

Bob Brehm: ...but both people support and oppose it, so it hasn't made it in. They seriously looked at doing something.

Andy Spano: It's a problem for every government.

Bill Cross: We continue to explore every avenue we have.

Bob Brehm: Their answer is HBITS (Hourly-Based Information Technology Services) to everything which is even more expensive because you have to pay the employee plus the company to come in but they still they take the knowledge with them when they leave. And they're very task-specific to come in.

Bill Cross: So, the HBITS process provides us to hire kind of a broad talent but we have essentially as Bob said we pay about double, almost double for those people as we would for a permanent employee. And it's temporary.

Andy Spano: It's not only temporary but you don't have the flexibility with that employee. You can't just say I want you here now, I want you there now because you've hired them for a specific purpose.

Bill Cross: The specific skills and specific tasks as specialized.

Bob Brehm: We have had to use them in an emergency.

Andy Spano: It's about time. Well I'm telling you someone should deal with this.

Bob Brehm: I agree with you.

Bill Cross: There's no argument from this guy. So, we're trying. In the interest of time and we do recognize the price and the expansion of scope for the new system with the online ads, certainly will add to our work is not to push the date out and also to deal with whatever stopgap

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measure we have in terms of a solution because the new system won't be ready in time. We're going to contract.

Kim Galvin: Well, we have 30 days that's plenty of time.

Bob Brehm: I have to say this is the third budget in four years where we have had a substantial change in our section of law with a deadline semi like this. This is probably the larger add from a technology point of view and a regulation point of view than we've had but it's the worst time of year for election administrators to be taking on new work because it's when we're busiest for ballot access and busiest for campaign finance reports to be filed. And on-boarding new treasurers for new campaigns that are just beginning, it's the worst of the worst to on-board new responsibility when you're already...I think there may be technology money that we can access but there's no staff money to access. So that kind of makes it hard to have these kinds of things in a budget cycle without people to implement them.

Bill Cross: And it's not just strictly people depending on how the legislation is interpreted it maybe a system or structure component or something we need that we don't have now to capture and publish some of this information. We don't have something right now scalable, so it might be some new technology that needs to be implemented. So, it's not strictly just people, resources, its all of it.

Douglas Kellner: The total number of slots authorized for your unit is how many?

Bill Cross: There's 12 permanent IT staff.

Douglas Kellner: So, 3 out of 12 are vacant now?

Bill Cross: Yes. So, another development, like I said we do continue on track in terms of EFS development, ballot access, data conversion. We also continue our outreach we've finished the survey of counties, data to capture, data exchange opportunities with county boards. CAPAS-FIDAS steering committee to go over those results and start to define some internal requirements of what that new system will do and what those capabilities will look like. So, feedback from the counties is instrumental and designing the functionality system so we really appreciate their feedback on that area.

NYSVoter, as reported last month, we're nearing completion of the NYSVoter upgrade. We did show last month that it will be done by March and we're already in March. We are very close but final testing revealed several issues that just are not-ready-for-prime-time yet. Particularly working with work performed by a previous vendor that we're now trying to retrofit and get working. We are making progress although it was unexpected in the last stretch. We're working through these. We'll set a new "go live" dated based on, of course the progress and at this point the election calendar with the special coming up and working around dates that we have to, but we are very close on that.

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The MOVE rewrite is also progressing in development. Resources have shifted a bit this past month on NYSVoter implementation because there is overlap among resources. We have what we have for resources so there was a shift this past month, but progress is continuing development of MOVE.

And we're still working with the State Office of IT Services on the data center relocation they're requiring us to do. We have pushed off to the extent possible knowing that at the completion of the NYSVoter project we will have a lot less to move than if we did it in the middle currently. So, they've backed off a bit from pushing a date to the curb, but we are still working on several aspects of planning for that with our communications vendors and several other vendors for that move and relocation. I anticipate that it'll probably happen shortly immediately right after NYSVoter implementation towards the end of this month or beginning of next.

Security, I think has been covered by several people so far, so I'll just throw in that IT on a continuous work with the rest of BOE in the planning and implementation of the security initiatives for both the agency and the county and the new budgets in the HAVA funds. IT is also working with Ops and PIO in development of Cybersecurity tabletop exercises in conjunction with DHS to be held. We have formally applied, we have now formally applied to DHS to have them do a full risk assessment of our systems and we've applied and we're filling out the details of what that assessment engagement will look like, what systems will be scanned, what they will be looking for and things like that. BOE has also been invited to speak at NYSLGITDA which is the New York State Local Government IT Directors Association. It's a mouthful, spring conference in early May on the topic of Elections Security. So, we had a call with that organization's president and vice president to talk about some of the content for potential presentation with them and we'll probably have a follow up call with them.

We frequently reach out to county boards and relay security information on a regular basis. Reaching County IT people has been a little more problematic even though we do make the efforts possible so this avenue for them and the communication channel kind of jumped at the opportunity to speak at their conference, establish a better relationship with them.

Website analytics is about normal for main website averaging about 200,000-page views a month. Traffic to the Voter Look-up site slightly bumped up to about 98,000-page views but otherwise pretty normal for this time of year. That's all I have.

Peter Kosinski: Any questions of Bill? Thank you. And our last unit Enforcement Unit Risa Sugarman.

Risa Sugarman: I have no report Commissioner.

Peter Kosinski: Are there any questions for Risa? Alright then we will go on to old business.

Risa Sugarman: I would just ask to meet with the Commissioners only in Executive Session for a short.

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Peter Kosinski: After the meeting?

Risa Sugarman: Yes.

Peter Kosinski: Is it a personnel...

Risa Sugarman: No, just for...

Peter Kosinski: A confidential matter though?

Risa Sugarman: Yes.

Peter Kosinski: Is that okay with the Commissioners? How do we feel about that?

Douglas Kellner: The Open Meetings Law requires that it be one of the categories that authorizes an Executive Session. So which category?

Risa Sugarman: It's about personnel.

Peter Kosinski: Personnel then okay. Alright then we'll go into Old Business. Is there any Old Business to come up before the Board?

Douglas Kellner: Well we had the regulation?

Bob Brehm: Yes.

Peter Kosinski: Oh, I'm sorry that's under Old Business. So, the regulation that we have here is the automated audit tool regulation that's been out there for a couple of months...

Bob Brehm: Procedure.

Peter Kosinski: ...I believe at least for comment and is now coming back to us for...

Bob Brehm: It's not the regulation.

Douglas Kellner: This is to authorize the procedures which were circulated a couple of days after our last meeting and I have reviewed the procedures. I want to point out to again publicly reprimand the Certification Unit for accepting documents from vendors with confidential designations on them that do not comply with our rules. I raised this issue repeatedly at prior meetings and the current director and deputy director of the Operations Unit were not supervising the office at the time those procedures were submitted. So, they are not personally at fault. But we've gotten to the point now where I've raised the issue so many times that our regulation requires that the procedures be publicly available and it's an important transparency issue and that as soon as a vendor submits a document on it, the Certification Unit should be reviewing the document to see if there is a confidential designation on it that does not comply

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with our regulation and immediately notify the vendor that this submission is improper. And so, I want to make a point of that again, that it shouldn't reach the Commissioner level for me to have to read the document and see that there's an improper confidentiality designation on it. In the case of Clear Ballot, they designated as confidential documents that anybody could Google and get off the Colorado Board of Elections website. So, the fact that they had designated the documents confidential is just plain ridiculous and I might add that Colorado gives a good example. In Colorado the procedures are easily available because they can be Googled, and I would ask that Operations consider putting up these procedures as well as the procedures for the ImageCast and DS 200s to be publicly available as many other states make them available. So, with that digression, these procedures are fine and I move their adoption.

Gregory Peterson: I second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? So they are adopted. Is there anything else we have to do in this context to make the Clear Ballot available to our counties for audit purposes?

Tom Connolly: The system itself is already available to them, this simply authorizes the use of their tool for the purposes of an automated audit.

Peter Kosinski: Is there anything else we have to do to make them...

Brendan Lovullo: We'll let them know what happened here today.

Peter Kosinski: So, they can now start to use these tools for their audit purposes...in the upcoming election?

Brendan Lovullo: Yes.

Peter Kosinski: Alright any other Old Business to come before us? Okay then we will move onto New Business. Under New Business we have an item of some ballot access rulings. We have an objection from the 102nd Assembly District and we also have a Prima Facie ruling on the US Senate piece. So, does someone want to explain these?

Douglas Kellner: Well we have draft determinations.

Peter Kosinski: We do. I didn't know if anybody wanted to speak to these or...

Douglas Kellner: If there's somebody from the public who wants to address this otherwise I'll just move the draft determinations.

Gregory Peterson: Second.

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Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? Then it's adopted. That is that and then we have another piece of business and these are Enforcement Regulations part 6203 and these are proposed regulations regarding the Enforcement Unit.

Douglas Kellner: So, it's my understanding that the staff has worked together in taking comments from the Commissioners and synthesized them and will publish them for comments and we'll carefully review comments.

Peter Kosinski: Yeah, I'd just like to, you know, before we vote just mention I think this is an effort by this Board to give further substance to the Enforcement Unit which was created here about 3 years ago now a little over 3 years ago that's been in operation. I think we've seen how the Enforcement Unit has operated for those last 3 plus years. I think these regulations are an effort to try to put into some more definitive way how the unit should function within the agency. So, I think this is a good opportunity for us to do that and I think we'll put them out there as you said for public comment and we'll see what happens and then ultimately, we'll decide how to go forward.

Risa Sugarman: Commissioner, I would just like to say that these were provided to me yesterday at about 1 o'clock less than 24 hours before this meeting. They were drafted in secret. I did not know anything about them and I will be reviewing them and will be issuing a public comment during that public comment period.

Peter Kosinski: That's fine. We expect it. And so, anyone else that would want to comment is welcome to do so. So, I would entertain a motion to adopt to put these out for public comment. Is there a motion?

Gregory Peterson: So, moved.

Peter Kosinski: Second?

Andy Spano: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? Alright so they are adopted to be put out for public comment and we'll see what happens after that. I have no other business to come before the Board today unless anyone else would like to bring anything up.

Andy Spano: No, I just move for Executive Session.

Peter Kosinski: We've already set our next Board Meeting date which I believe is May 3rd so that's already been set we don't need to do that here.

Bob Brehm: We'll have to come up, based on their estimate of a 120 days, so we can at least schedule the one after May 3rd try to get that one to you to make sure your calendars are clear.

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Peter Kosinski: You'll let us know on that. In that case if there's no other business, I would entertain a motion to go into Executive Session to discuss a personnel matter. Is there a second? All in favor? (Chorus of ayes; 4-0) Opposed? Adopted. So, we'll go into Executive Session. We will not, I anticipate, come back into public session for anyone who is here for that purpose. So, thank you.