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>> JIM WALSH: My name is Jim Walsh.

It's my honor to moderate today's meeting.

I'd like to start off with the introductions of my fellow commissioners if I may, My Co-commissioner:

>> DOUGLAS KELLNER:

>> Evelyn Aquila

>> Gregory Peterson

>> And around the horn

>> Todd Valentine

>> Kimberly Galvin

>> Paul Collins

>> Joe Burns

>> Anna Svizzero

>> Bob Brehm

>> John Conklin

>> Bill McCann

>> Liz Hogan

>> Stan Zalen

>> JIM WALSH: Guests, please?

>>: Bob Warren.

>>: Bob

>>: Rick Karlin, Times Union.

>>: Barbara Murphy, Saratoga County.

>>: Amie Allaud, from the League of Women Voters, NYS.

>> JIM WALSH: First item of business, the minutes of the last meeting.

Any additions, deletions?

>> DOUGLAS KELLNER: I have one sentence to add to the end of the penultimate paragraph, which is that during the executive session, the Commissioners directed the Enforcement Counsel and Deputy Enforcement Counsel to meet with the Albany District Attorney to refer CMP 08-52, 08-92 and 08-95.

>> EVELYN AQUILA: Is that on the last page? Just before the last paragraph, okay. Thank you.

>> DOUGLAS KELLNER: My understanding was that it was to refer it to them.

>>ELIZABETH HOGAN: Bill and I did go and meet with them and provided them the files.

>> EVELYN AQUILA: Well, we asked you to.

I got involved asking you to have Paul make the telephone call because he was acquainted with people in that office.

>>BILL MCCANN: It was not for a specific referral. The conversation was not to specifically refer it and the board would be discussing it at the next meeting. That was specifically said.

>> DOUGLAS KELLNER: You want to change it to ' to meet with the Albany county District Attorney to discuss CMP 08-52, 08-98 and...

>> EVELYN AQUILA: We never did that.

>>BILL MCCANN: I wasn't at the meeting. I can't speak for…

>> DOUGLAS KELLNER: I thought we said go bring them the file and give it to them.

>> EVELYN AQUILA: I don't think we ever bothered the District Attorneys. Just sitting down and talking with them.

>> DOUGLAS KELLNER: Why don't you fix that in terms of what you think it was supposed to be?

>> JIM WALSH: Don't we have the recorded minutes?

>> DOUGLAS KELLNER: It was executive session. We told them to bring it to the D.A. Right?

>>JAMES WALSH: My recollection was, we asked you to go to the District Attorney's office and have a discussion with him regarding this and other--

>> DOUGLAS KELLNER: Okay. So you want to write that?

>> EVELYN AQUILA: I didn't think we ever brought anyone to a District Attorney in this state to "discuss".

I thought we don't bother the District Attorney and say we want to have a discussion with you.

That looks like we don't know what we're doing here.

It looks like we want your advice on what we should be doing.

>> JIM WALSH: I don't think Greg should be asked to remember what was said in the last minutes and insert it into the minutes and insert it into the minutes saying this is an official document minutes of the last meeting.

That's not fair to Greg.

>> EVELYN AQUILA: I believe we said send it to the D.A. It was already said that it was brought to a D.A. in one county and he rejected it. If I remember right.

>> JIM WALSH: This was discussed in executive session. We're not going to open up the executive session.

>> EVELYN AQUILA: Oh, discussion, I'm sorry, I'm sorry.

>> JIM WALSH: I think the minutes should stay the way they are. We can't reconstruct them by memory and put them in as official minutes of the last meeting.

>> DOUGLAS KELLNER: Are you saying we didn't direct the…

>> EVELYN AQUILA: Do we have to have an executive session?

>> DOUGLAS KELLNER: We clearly told the enforcement Counsel and deputy enforcement Counsel to meet with the D.A., with respect to those three cases.

If you don't like the word refer, we can take the word refer out, but the four of us directed them to meet with them. And they went and met with them.

>> TODD VALENTINE: Well, I mean, the way I understood this, and we can go back and check the record, we did table all of the cases.

They have and back on the agenda for now. I'm not sure this, any official action occurred. Action occurred, but not a vote as relates to the board, except for the table.

>> DOUGLAS KELLNER: I don't understand why we are backing off this now.

>> TODD VALENTINE: It is not a question of backing off. It's a question of there was a determination by the board to table these cases because they are back on the agenda for now, and...

>> DOUGLAS KELLNER: But we also voted to instruct Bill and Liz to go meet with the D.A. and to give them the file on this. And I believe we used the word refer on these three enforcement cases. And I don't understand…

First of all, I didn't understand why the memo came back reporting on the meeting, suggesting that we needed to take further action to refer it. Because we had voted to refer it.

In the executive session.

>>ELIZABETH HOGAN: If I could speak to that, it's my memo. If I could speak to why I said that.

>>JOHN CONKLIN: Are we having executive session today? Isn't this a better topic for that session?

>> JIM WALSH: I agree. We are about to be bordering on talking about what took place in the executive session. And that's why we have an executive session. I'll set this aside.

We let the minutes stay the way they are, but we'll come back to it

>> EVELYN AQUILA: Discuss it in executive session again?

>> JIM WALSH: Yes. Next item, Evelyn asked to address the board. Evelyn, if you would, please?

>> EVELYN AQUILA: Thank you.

I just wanted to take a minute of your time.

Over the last couple of weeks I received numerous telephone calls and letters from counties and different organizations.

And from citizens concerning the lever machines, their desire to just have a lever machine, and also to, about our approval of the pilot program.

I'm not going to go into a long dissertation supporting both of those things or not supporting them.

What I want to tell you is that we are compelled by the federal law called HAVA that we have to go forward with electronic machines.

There also is a state law that moves this along further.

We have our own regulations which are probably the best as we've said before in the nation.

So I would say that I read all the letters.

I heard all the telephone calls.

Unfortunately you're bringing your complaints to the wrong person.

These complaints can't come to us because we have to obey the laws.

The laws have been passed and we have to follow the laws.

I asked Bob Brown to fill in who, if you wish to make these complaints to, the complaints should be sent to.

Bob, will you do that for me?

>> BOB BREHM: Yes, Commissioner.

There were two that you had mentioned.

One, the individuals who would like us to continue to use lever voting machines.

I think the board has been clear in identifying it as a federal law that has gone unchallenged and unchanged.

If individuals continue to wish that lever machines are permitted under a HAVA implementation, a change to a federal law needs to take place.

That means contacting your representatives in Congress.

The other issue that you had asked about was the Part 6210.18 draft regulations.

They have been registered with the Department of State.

It finished its process at the regulatory level to get to the Department of State.

It should have been posted, I think, June 10th on the State register.

And it is properly posted for public comment.

We have set up on our home page on our Web site a link to the draft regulation and we also have set up an ability for people to e mail their comments to a link from our Web site or to mail their comments directly to the board here.

So anyone who would propose altering it in any way or sharing their written comments can do it that way.

>> EVELYN AQUILA: I thank you, Bob.

Thank you, Mr. Chairman.

>> JIM WALSH: Thank you.

Unit Updates:

Executive Unit Update:

Co-executive directors Stanley Zalen and Todd Valentine.

>> STANLEY ZALEN: I have nothing to discuss with the Commissioners at this time.

Thank you.

>> TODD VALENTINE: We continue to work on the pilot program.

Anna and Joe can report later on the status of the testing, but that is what is the main thing going on now.

Moving slightly into the future, we do have our own petition filing period is next July

Not next July.

It's this July, coming up in the middle of July.

You need to be made aware of that.

It's primarily judicial delegates.

There are no state offices, Senate or Assembly.

It's possible, one item on that is the potential vacancy in the 23rd Congressional district by Representative McHugh.

At the time of leaving office, it may open up a window for filing petitions for primaries.

It's unlikely at this period of time.

It is expected that that petition won't happen until after the period.

So if it gets filled at all it would be by a special election or certificates of nominations filed by the parties committee.

It is not anticipated to impact our own filing season in July.

Just to give you a heads up that it could become an issue.

>> EVELYN AQUILA: Sure.

>> JIM WALSH: Thank you.

Legal Unit Update:

Legal, Kim Galvin.

>> KIM GALVIN: I was going to give my update without stealing Anna's, but then Todd stole mine.

We spent a great deal of time working with election operations and all of the various moving parts of the pilot program, continuing with the contract amendments and all of the resolutions and Anna will discuss those.

We feel the numerous calls from the county boards and potential candidates for these local upcoming elections.

Once again, every question you can imagine has come to us.

We had continuing dialogue with the Attorney General's office and Department of Justice regarding the military ballot proposals that were working themselves through both houses of the legislature that seem to have stalled in one half of the legislature for now.

And then we have had an array of phone calls regarding the timing and different scenarios regarding the 23rd Congressional district.

And fairly busy with the pilot process.

Anything else to add?

>>PAUL COLLINS: I would like at some juncture and I don't know whether you prefer to do it in executive session or now, to get some authorization from the board as we move forward with the pilot program and there are counties that wish to increase their degree of participation or counties not heretofore participating who may wish to participate.

I would like to have the board authorize staff to do that so we don't have to constantly come back to the board.

Because there's obviously going to come a time when perhaps there's going to be a change and there's no board meeting.

We have had discussions with the Department of Justice on this.

So I don't know whether you want to discuss that presently or in executive session.

>> DOUGLAS KELLNER: I don't have a problem, Paul, but I think you need to write up exactly what it is you are proposing.

If you could write that now and then we can put it on the agenda when we get to the end of the resolutions.

>> PAUL COLLINS: That's fine.

>>JAMES WALSH: Is there a resolution that you have prepared?

>> PAUL COLLINS: No, but I can do one, Commissioner

>> JIM WALSH: Make sure you do that to our attention, please.

Election Operations Unit Update:

>> ANNA SVIZZERO: We had a canvasser's meeting today for the election held in the 77th and 85th assembly districts.

The city board is not voting to certify those results until their next meeting.

We'll have those for you at your next meeting.

Our weekly status meetings continue with SysTest and NYSTEC.

Our vendors do call upwards of three times a week.

We do them more frequently as issues come up so there is not any lag in the testing or anybody's interpretation of what we expect to come out of the testing.

We provided sys text's new estimates to the vendors.

We expect to send them a notice in the next day or two asking them to replenish their escrow accounts.

We have a resolution raising the contract cap for your consideration later in the meeting.

Vendors again have been told that if their account is not current, testing will be stopped until it is.

We, as Kim pointed out, have been working together on additional details for that pilot with the Department of Justice.

We have concluded for the time being the EMS orientation training sessions.

We had 22 counties participate.

107 county staff people participated and almost to a person, everybody was very satisfied with those training sessions they felt that their fears had been allayed about having to program their own ballots and we think we gave them a good platform for the vendor training that follows what they've done.

We continue to work on our new procedures.

We've begun providing them to the county boards.

We sent out Friday the security seal, our requirements.

We had considered those changes based on comments that we did get back from county boards.

That's a good step for them to know we go through.

We do take their issues under consideration.

We discuss them with our security team at NYSTEC and make changes accordingly.

That's one of the first one reflecting changes based on actual use.

We have been considering how we are going to train our boards on a lot of these new procedures.

What we have been doing over the last couple of weeks is participating in demonstrations of Web based training opportunities.

So we've seen a few demos.

I'm not sure what the cost ramifications might be, but we are thinking that would be a good way for us to do a good many of our procedures.

It would save us travel time, travel money, per diems, car rentals, et cetera, because we no longer have a unit vehicle.

We are perhaps hoping that the Commissioners can authorize that and authorize the co Executive Directors to contract with a firm that is perhaps already on state procurement, so we don't have to jump through hoops in order to make that happen.

If there were hands on sessions regionally we would do those, but we would like to change procedures that would save considerable amounts of money for the agency.

We concluded work with the HAVA task force and assisted in revising the implementation plan.

That since has been sent to the EAC and is going through their posting and comment and review process, whatever that might entail.

I do need to advise the board that there will be no additional information coming to the board from the City of New York with regard to the paper ballot election that was conducted on Staten Island.

Counsel on the city board made it clear they are considering the matter closed.

They will not be interviewing inspectors or sharing additional information with us.

I have no report to present to you or nothing to consider in creating one.

>> EVELYN AQUILA: Anna, could I stop you there for a second?

Could the New York City board legally say that to us?

That they are not going to respond?

>> ANNA SVIZZERO: Sure.

>> EVELYN AQUILA: By law, we have oversight.

And to say that they are not going to share any information with us from now on, I don't know if they have the right to do that.

I just put that out there for us all to think about.

>> ANNA SVIZZERO: Well, I'm not a lawyer.

But they chose... Originally they said they would be interviewing inspectors and gathering some information.

Then we were told that was not going to happen.

I do see that they are on the agenda for the conference in Geneva and the topic is how to run an all paper election.

I won't be attending the conference.

But if somebody else does go...

>> EVELYN AQUILA: My mother did that fifty years ago, an all paper election.

>> ANNA SVIZZERO: If their board has directed them they did the best they could, because clearly this all stemmed from a last minute court decision.

I can't argue with what the board is directing them to do.

I needed to bring you that message.

We do not have a report for you.

>> EVELYN AQUILA: We have to give serious thought to that.

>> ANNA SVIZZERO: It has given me pause, I can tell you that.

We do continue to work with OGS on our grant program.

Joe Burns is reviewing contracts so we can address how to get it done.

We will be setting up in house meeting with people, with John and Bob's units who are already managing the grant program so our staff can get familiar with those procedures.

It will be a process that the county boards already understand so there won't be a learning curve in as far as submitting documentation for reimburse out of remaining HAVA funds.

We have provided the administration unit here in our agency with all of the information that has been requested with regard to the single audit being done on the use of federal funds.

We understand the auditors will be coming in and perhaps will be interviewing staff people. We are prepared for that.

We are moving the pilot project functional testing. We were supposed to have done it the first week of June but because we decided to wait for the newest software that has the most enhancements with it.

That was provided on June 8.

We built ballots; those are being printed right now.

Once the ballots are in hand, we will be meeting we will be reaching out to the cement committee when they come to town if they so choose, to help with the conduct of that functional testing.

We are currently reassessing acceptance testing site. We are using the same building that is available to us at no cost through OGS.

It's on the state campus.

We will begin acceptance testing scanners from ES&S this week.

We have a resolution for you today regarding costs related to acceptance testing, but I also need to point out we may be coming back to you to revise that because we had anticipated having three full time fully trained personnel that this board voted on, authorized to go ahead, fill the positions, interview et cetera, but for some reason budget has not given us the ability to fill them.

We've interviewed.

We know exactly who we want to bring in and we have now lost on all the hit the ground running concepts we had in place.

I don't know what the problem is at budget, but Stanley has been following up.

We just have had no success in closing the loop on this.

Clearly three trained and experienced people, I don't know how many temp people it takes to make up that gap, but we will do the best we can and may have to come back to you to revise our acceptance testing cost estimates.

We continue to do all of the other work that goes on in operations.

We have a lot of new commissioners and deputies.

So they are asking questions about the petition process.

The workflows and that kind of thing.

We are certainly are fielding those questions and supporting them on every other matter that they do bring to our attention.

So the work in ops is ongoing.

>> EVELYN AQUILA: I have a question.

I don't know if I should direct it to Kim or to you.

When budget won't give us the personnel that we need and it's going to be paid for by federal money, can we go to court and force them to give us those people?

I'm not a lawyer.

Again, I just want to make that clear.

Would that be, since we have sort of exhausted every route.

Or does this have to be asked in executive session?

>> KIM GALVIN: I don't know. We can see...

>> EVELYN AQUILA: No, you don't think so?

>> PAUL COLLINS: I don't think a State agency can sue the government for that type of activity. It's legal documents... I will defer to….

>> EVELYN AQUILA: Since it's federal court.

>> PAUL COLLINS: I will defer to Commissioner Kellner on this issue but I don't think that a state agency--

>> DOUGLAS KELLNER: The Erie County Commissioners have sued their county government and recovered partially.

I think if the governor fails to carry out…

(Overlapping speakers.)

>> PAUL COLLINS: But this is the State.

>> DOUGLAS KELLNER: I mean; we are an independent agency within the executive Department of the state government.

And I think there are situations

I'm not saying this is one.

Or that the governor has acted inappropriately here.

I think at this point…

First of all, I don't know that this has reached the level of the governor himself.

And I would urge the, both Executive Directors to press this issue with the budget director to make it very clear that the budget director understands what we regard as the folly of the current situation where you have three persons who are qualified and who have been interviewed to do this job who are going to be replaced by more expensive less qualified temps in order to comply with the federal court order.

That sounds like a pretty silly decision and I think it's probably just because of inattention at the budget office.

And my understanding is the governor's Counsel and the governor's Secretary have both agreed with our position.

It's just a question of getting somebody at the budget office to actually execute it.

>> EVELYN AQUILA: Stanley and Todd, if you go see them, would going with a letter from us be of any help, with the four of us signing it along with your own visit?

>> STANLEY ZALEN: It can't hurt.

>> EVELYN AQUILA: Maybe we should do that. Have a letter the board will sign.

>>TODD VALENTINE: It's in the minutes.

>> EVELYN AQUILA: I'm trying to think of some way to get the employees that we need, you know.

Let us know.

>> TODD VALENTINE: We have consistently been making that argument over quite a course of time now for this area as well as for campaign finance.

And Commissioner Kellner is right in the sense that we have had meetings with the governor's counsel and his secretary and you have been part of those meetings.

And with the division of budget as well.

But it doesn't seem to get the ball moving.

>> EVELYN AQUILA: I'm just thinking; if we sent a letter and we were also ignored again...

>> TODD VALENTINE: We can keep trying, sure.

>> EVELYN AQUILA: Then if we had to go to court, we're under a federal mandate here.

If we had to go to the federal court to get them, the federal court may laugh.

They may not think that its anything that important.

>> DOUGLAS KELLNER: I don't think so.

>> TODD VALENTINE: They are not going to laugh.

I'm not sure what he would do.

>> EVELYN AQUILA: I think that, you know, judge Sharpe should at least know that there are other things here holding us up.

We are not being obstinate.

We want to move forward, but we run into these kind of administrative boondoggles.

>> TODD VALENTINE: And the State is before the federal court in addition to the State Board of Elections.

They are represented by the attorney general's office

They have the executive department, the governor as well as the state except for us, I suppose if you want to put it that way.

We can continue to make that argument.

I don't think we just give up.

We certainly haven't given up.

Another approach, another letter, it never hurts.

It would never hurt, Stanley is absolutely correct.

Going on the record like that does not hurt.

>> EVELYN AQUILA: I'm not speaking for the other three Commissioners, but I'm certainly willing to go on record.

I would hope they would be, too.

>> DOUGLAS KELLNER: I'm sure we are.

>> EVELYN AQUILA: I don't see anybody, any voices in support here.

>> DOUGLAS KELLNER: We all agree with you, Evelyn.

We are frustrated; we need to leave it to Todd and Stanley to figure out the best way to get the paperwork done.

>> ANNA SVIZZERO: As Kim pointed out, the contracts were approved.

We appreciate the Comptroller's Office and the Attorney General's office expediting the reviews of those contracts.

We are waiting for the contract adds to be processed at the controllers' office, but we appreciate the ability to move those forward.

Other than that, I'm happy to answer questions.

But I think that's pretty much what I had.

Joe, anything I left out?

>> JIM WALSH: All right. Thank you very much.

>> ANNA SVIZZERO: Thank you.

>> JIM WALSH: NVRA and public information, John Conklin.

NVRA/PIO Unit Update:

>> JOHN CONKLIN: Good afternoon, Commissioners.

The unit attended a filming of our television PSA last Friday for the new machines.

The PSA will contain region specific references and also be radio PSAs in both English and Spanish.

That's moving along.

The new money we are getting from the feds for the HHS poll site accessibility improvement funds, the grant application has been completed and sent to Washington.

The state legislature appropriated this federal money earlier this year in the state budget, putting it in the eight localities account.

One of the resolutions you have in the new business section will be on sub allocating this money.

In addition, the contract language for the counties to apply for the money has or is being approved by OGS and the AG and controller.

We have been working diligently on the story boards for the poll worker training and voter education campaigns for the two machines.

We completed the federal voter assistance program updates to the New York section of their Web site.

Which Anna and I worked on together.

Additionally, the FVAP as it is commonly called asked for a conference call to discuss legislation pending here in our state, legislation that would make it easier for Armed Forces personnel to obtain absentee ballots.

Kim alluded to that in her section.

Without giving an opinion or board position on the bill, we answered their questions and gave them insights on our legislature and its processes, such as they are.

We have an update on the changes to the voter registration form with the organ donor information.

We received brief comments from a usability expert and a proposal on how they can assist us with this on a broader basis.

That has been forwarded to the division of budget for evaluation and possibly approval.

Greg Fiozzo conducted an NVRA training session in New York City two weeks ago which was well attended

He had more than 125 people show up at that.

There have been a number of updates made to the Web site since the last board meeting.

We posted amended election results for the 2008 general election that included the constitutional amendment to allow civil service credit for the members of the armed forces.

We moved the results of the 20th congressional district off the front page to the 2009 election results section.

We posted the HAVA machine pilot plan, the revisions, county participation spread sheet, Department of Justice narrative and the final court order.

We did proposed changes for regs 6217.5, 6210.18, and 6200.1.

We posted the 2009 contribution limits.

The 2009 campaign finance handbook.

The 2009 campaign finance filing calendar and the 2009 law book is also posted now on the Web site.

Lastly, Bob, Greg, Patrick and I met with the Department of Motor vehicles to discuss the issues raised in the New York City DOE letter of April 7th.

DMV are drafting the letter back to New York City which is going through the approval process in the Commissioner's office.

We are drafting our response to New York City as well which we will send a copy of with the DMV letter when we get it.

Other than that, it's the routine operations of the unit, NVRA, NYSVoter, et cetera.

Happy to take questions.

>> JIM WALSH: Thank you, John.

Any questions?

(There is no response.)

>> JIM WALSH: Campaign finance, Bill McCann.

Campaign Finance Unit Update:

>> TODD VALENTINE: Liz, Liz.

>> JIM WALSH: Liz?

>> ELIZABETH HOGAN: Thank you.

Seminars are ongoing.

Campaign finance seminars I discussed previously with you.

We have a couple more weeks of presentations.

They are going well.

They are well attended.

We are very happy with the revised seminar presentation this year.

I would like to just let you know just because I try to keep you aware of what's going on in campaign finance as a result of our loss of staff on the intake end.

You know, we've discussed that.

Previously we had six program aids answering our telephones and acting as call center.

We now have two.

I have been monitoring the call volume because of that issue.

We are unable to fill those other four positions.

And call volume is up significantly.

We had, I had asked a supervisor in that unit for a figure earlier this week for something that I was doing.

She indicated to me that in the first five months of this year we had in excess of 4600 calls on that, those phone lines.

And you have those two people who are doing a phenomenal job and we have two supervising accountants who will pitch in to answer those telephones as well.

So it's very busy on that end.

We are preparing a presentation to give to the election Commissioners at their conference next week.

Regarding the amendment to rule 6200.1, that is published, and understand there will be public comment through the 20th of July.

We are working pretty much have finalized the final version the annual report for campaign finance and enforcement.

The audit unit has finished as well counsel has submitted memos for the Commissioners' consideration regarding the corporate projects that they are working on.

There are currently campaign finance audit staff is working on the '08 corporate contribution project.

We are working on the '06 statewide offices audit procedures.

We have an ongoing dynamic with IT regarding the operating neutral software.

Thank you.

>> JIM WALSH: Thank you. Any questions?

>> DOUGLAS KELLNER: I was just going to raise this issue that I talked to a few people about in the last month, that I just learned that the campaign finance unit has not been collecting interest on the judgments against non filers.

And it strikes me that at a time when we have been arguing to the legislature that the fines are too low and that we committed to the governor that we were going to increase our collection efforts, that we should not be waiving the judgment interest when we, at least in the regular course.

If there's special circumstances, I understand, but in the regular course that we should be collecting the interest on unpaid judgments.

>> ELIZABETH HOGAN: The regular course of collecting the judgments, we look at the fine as one half of the judgment.

Which in fact, it is the judgment that orders the filing and the fine.

Our focus from the campaign finance enforcement perspective has been that we want the filing to be made because the availability of the records to the public is our focus.

And quite frankly, if we can get the filing, collecting interest on the judgment is not something that we had pushed for.

We certainly collect the fine, but in the past that has been our reasoning.

>>TODD VALENTINE: There isn't any reason why we should.

I would have to defer to Stanley for institutional knowledge as to why we would have waived that in the past, but probably due to the small nature of the fines but they can be substantial.

You make a valid point if we are seeking to…

It is a legitimate avenue that you gained judgment, you have enforcement. And you have this avenue to you.

True, those monies do not come directly to the agency.

They go to the State.

But that's not the point.

The point is; it's there.

There is no reason to waive that automatically, which is apparently what we've done in the past.

Again I'll defer to Stanley on that, but I don't see why we couldn't.

I understand that you provided a simple calculator that can be used for that or a software program that does that.

It does initially it will put a bit of a burden on the staff.

Once it becomes routine, I don't see why it couldn't be part of the process.

Again you always have that right to waive that in certain cases.

>> DOUGLAS KELLNER: Right. As I say, I think… I was unaware.

It just never occurred to me that we wouldn't collect the interest on a judgment.

So I would make a motion that we make clear that the policy is to collect judgment and that the staff can still make appropriate considerations

>> TODD VALENTINE: As they do now.

>> EVELYN AQUILA: May I ask one question, though, before I vote for that?

How is that interest compiled? Is it from the…

Some people may not even know that they have done anything wrong, you know.

I know ignorance is no defense, but at the same time do we start to count the interest from the day when we receive that first complaint in this office?

The day when the first letter goes out?

The day when our second letter goes out?

When do we start to compile the interest?

>> ELIZABETH HOGAN: From the date of judgment.

>>BILL MCCANN: Date of entry of the judgment.

>>ELIZABETH HOGAN: The date that the judgment is entered, which is pretty much the day the judge signs it.

>> EVELYN AQUILA: Okay. I'm all right with that.

>> JIM WALSH: We have a motion and second. Any discussion? All in favor aye?

(All members responded "aye.")

>> JIM WALSH: Opposed?

(There is no response.)

>> JIM WALSH: Thank you, Liz. Do we have a report from ITU?

>>TODD VALENTINE: George is out, no report.

Old Business:

>> JIM WALSH: No old business?

Hearing none.

New Business:

And for new business.

Vote on resolution to approval additional funding for voting system certification costs incurred by the contract extension for and provision of NYSTEC independent security verification and validation.

Anna and Joe Burns?

>> ANNA SVIZZERO: These two would make the NYSTEC effort consistent with the five year run at sys test and would certainly accomplish the goal of seeing us through this certification effort and the tweaking, if you will, of software that we fully expect to happen immediately after certification, based on the outcome of the pilot and the outcome of the testing itself.

So these are supported by the unit staff and are recommended to the board for approval.

>> JIM WALSH: Anyone have any questions?

>>: Move the resolution.

>> JIM WALSH: Second?

All in favor?

Opposed?

Carried.

Resolution to approve additional funding for voting system certification costs incurred by contract extension for and provision of NYSTEC project management support.

Anna?

>> ANNA SVIZZERO: The same argument.

The first one was security related and this one is keeping us on track, helping us with the revision of procedures, the invention of procedures, and all of the tasks associated with the project management aspect of this.

We would not have been

I do think we are successful in our certification effort, but I don't think we have been that successful without NYSTEC support.

It's clearly a skill that we don't have on staff.

We also recommend approval of this resolution to the board.

>> JIM WALSH: We have a motion?

>> DOUGLAS KELLNER: So moved.

>> GREG PETERSON: Second.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Opposed?

(There is no response.)

>> JIM WALSH: Carries.

Vote on resolution to approve funding for temporary contract staff and supplies to support optical scanner and valid marking device accepting testing.

Anna?

>> ANNA SVIZZERO: This is acquiring the services of Kelly temp staff.

It's the process we used in our original acceptance test effort.

With any luck a few of those people we hope will still be available to us.

It includes the cost of printing ballots that will be used in the testing process and modest office supplies that will be needed to do the record retention and document creation for the county boards for them to preserve, since they are the ultimate purchaser of the unit.

So the unit recommends approval of this as well.

>> DOUGLAS KELLNER: So moved.

>> GREG PETERSON: Second.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Opposed?

(There is no response.)

>> JIM WALSH: Carried.

Vote on resolution and proportion.

>> JIM WALSH: Resolution on proportional allocation of 2009 HHS, Health & Human Services, Access Improvement Grant Funds?

Anna?

No, John Conklin and Bob Brehm.

>> ANNA SVIZZERO: No, thank you!

>> JIM WALSH: You must have an opinion anyway, right?

>> ANNA SVIZZERO: You can bet on that!

>> JIM WALSH: John, go ahead.

>> JOHN CONKLIN: This is self explanatory.

This is what I mentioned in the unit update, sub allocation of the HHS grant money that the legislature allocated this year.

The chart shows how much money the counties are getting.

It's all going to the counties.

HAVA section 251 money.

>> JIM WALSH: Questions?

>> JOHN CONKLIN: 265, sorry.

>> JIM WALSH: Motion?

>> DOUGLAS KELLNER: Motion.

>> EVELYN AQUILA: Second.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Are opposed?

(There is no response.)

>> JIM WALSH: Discussion and possible resolution regarding use of upgraded software by non pilot counties.

Anna, you have an opinion on that?

>> ANNA SVIZZERO: We have been approached, Kim & I, Joe, Stanley and Todd, I believe so.

We were on a conference in the city where the county asked the use of, even though they are not in the project, the software that has been modified, it includes features that the disability community has been looking for.

It also deals, I believe, with some language requirements that the city has and in general I think the, a couple of the changes deal with how quickly ballots are marked and the verification can occur.

There are advantages that the voters would benefit from.

Our concern, Kim can be heard on this as well, was that with vendor support being what it is, we wanted the priority to be that the counties that had committed to the pilot that have something vested in the tabulation end of this and being in a position to comment to us and help us develop procedures and modify software based on that use, that those be the needs met first by the vendor when it comes to training and support and that the non pilot counties could use that software, which means there would be consistency across the state as to how ballots were created in ballot marking devices.

There was that kind of conversation not only with the city board but also with the county boards, one of which was the counties which chose to get into the pilot project so they will be benefiting in the first instance.

So I would defer to Kim for any comments that she has.

We see value in moving forward.

But we clearly want the board to direct the vendors to provide that support in a prioritized way with the pilot counties first.

We do have a draft resolution I believe we shared with you prior to the meeting.

If you want changes made, we can certainly make those on the fly.

>> JIM WALSH: Which one was that?

What we are calling number eight?

>> TODD VALENTINE: That's it. Yes.

>> JIM WALSH: Number seven, okay.

>> DOUGLAS KELLNER: All right.

Anna, the, what are the proposed changes in the software for the Sequoia Dominion Image Cast that would affect the ballot marking device?

>> ANNA SVIZZERO: The creation, the time that it takes to actually print a ballot.

A lot of comments have been shared with us on the county conference call and in the conference calls that we had to ask counties to participate in the pilot, which spoke to how long it takes for a ballot to be printed by that ballot marking device.

The change in the software has cut that, I believe, in half.

Has it not, Bob?

Almost in half?

>> BOB WARREN: It sped it up.

>> ANNA SVIZZERO: Right, this is probably the biggest piece in that process.

>>BOB BREHM: There are a few; the current software that is not on the BMD side but will be for the pilot program has a couple of enhancements from the training part of it.

So the screen shots are different.

It's a little bit, instead of it being intuitive, they really go through the selections for the use and the selection of the various accessible devices way up in the beginning and also they've improved when you go through and re-verify your votes before it prints the ballot, it does that in a way that does not cause the ballot, you know, force them to have to re-select every choice they have done in the ballot.

So it speeds through that area and makes it easier for them to follow those changes.

Under the current version that is out there for the BMD, you had to hit the button and re-select every choice in the verification.

Now you only have to do that if you wanted to change your selection.

>> DOUGLAS KELLNER: So there's a new version of software especially targeted for the Image Cast use as a BMD only?

>> ANNA SVIZZERO: It's part of the scanner BMD use now.

What this resolution would do is let the counties only using BMD benefit from that same software.

However, the tabulation component will not be turned on.

>> DOUGLAS KELLNER: I'm generally in favor of doing this, but there's a little bit of double speak, Anna, in this that last year we required that the software for use of the BMD specifically disable the scanners.

>> ANNA SVIZZERO: Right.

>> EVELYN AQUILA: Right.

>> DOUGLAS KELLNER: Well, is the software going to disable the scanners for those counties not using the scanner?

>> ANNA SVIZZERO: Yes, but it's different.

>>BOB WARREN: It will disable the tabulation. It can't totally disable the scanner.

>> DOUGLAS KELLNER: So it's different software from the software going to be used for the scanner?

>>BOB WARREN: You can't totally disable the scanner because to initiate the BMD session, you have to use the scanner to initiate it.

That will be the entire, the same process if these are updated.

They just won't have the ability to do the tabulation as they didn't have that ability last year.

>> DOUGLAS KELLNER: That means in order to deprive them of the ability to do the tabulation; it will be a different version of the software.

>>BOB WARREN: It will be a different configuration file that is encoded with the ballot definition when it's put on the machine.

The software version, the firm ware version on the scanners will all be the same.

The configuration file that goes with the ballot file will be different.

>> DOUGLAS KELLNER: So the scanner won't be disabled except in the configuration file put in by the local board of elections.

>> And that enables or disables the scanner from tabulation.

>>DOUGLAS KELLNER: Which is contrary to how we set up the BMD program.

>> ANNA SVIZZERO: I see your point. In the ES & S world all they have is AutoMARK. So we are in the Dominion world now.

>> DOUGLAS KELLNER: What is the change in the AutoMARK software?

And why hasn't it just been submitted for certification?

>> ANNA SVIZZERO: That is what's there now, yes, but in order to give that to the counties that are not part of the pilot program

>> DOUGLAS KELLNER: You're asking us to certify the new software for the ES&S AutoMARK 200?

>> ANNA SVIZZERO: To authorize…

In the Dominion world, in order to have a ballot created, that is created by the BMD and created by the scanner, you need to use the upgraded software.

You can't do half of that project….

You can't build ballots in two different softwares.

You have to use one consistent one as what is being read on the BMD is what can go to the scanner side for verification and then be used for tabulation purposes in those places where you authorized it.

In the BMD-only world, I don't know if we could harden that somehow so that configuration can't be modified.

We can talk to NYSTEC about that.

Do you know?

>>NILS EKBERG: The way the Dominion system is currently working; all the pieces of software are resident there.

What actually works is dependent on DCF file that Bob is talking about.

Within that DCF file you have the capability at the state level to lock it down so that counties cannot change it.

That's the way it is configured.

So the counties cannot actually change it.

>> DOUGLAS KELLNER: So I say in my view we need to say that in the resolution and if…I take it ES & S has submitted an upgrade for the software for the Automark 200; is that right?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: When was that submitted?

>> ANNA SVIZZERO: June 8.

>> DOUGLAS KELLNER: So what is needed in order to go through certification testing for that upgrade? Since it's only dealing with a ballot marking device?

>> ANNA SVIZZERO: I don't know that there's anything needed. It's in process now.

June 8th was the first of three regression opportunities that we allowed the board.

So the changes that the advocates had asked for were made in this version that also reflects some resolution of discrepancies that were found in the testing that had been done so far.

>> DOUGLAS KELLNER: So, you're asking us to certify software that was submitted for certification seven days ago?

>> ANNA SVIZZERO: Authorize it, not certify it, but yes.

>> DOUGLAS KELLNER: I don't understand the difference, especially when it comes to the AutoMARK and the ballot marking device.

In other words, we have a statute that requires certification and I'm not against it.

It's just that I don't see any reason why we should just ignore our certification procedures.

If they are required to have certification in order to use it, especially if it, we are just talking about the ballot marking device, then shouldn't there be some kind of review and then a report to the Commissioners?

And then we vote to certify it.

>> ANNA SVIZZERO: I...

>> DOUGLAS KELLNER: Are we setting a precedent now that whenever a vendor has a software upgrade, we automatically approve it without reviewing it for use by the local boards?

>> ANNA SVIZZERO: I think what we are, what we hoped to do is have you authorize its use in this instance the way you did to conduct the pilot project in the first place.

We will be doing...

>> DOUGLAS KELLNER: You know; I was very, very specific when we voted on the pilot project resolution.

You may recall this discussion where I wanted you to define exactly what it was that we were authorizing for use in the pilot project.

And to go through the model numbers and to go through the software versions.

So anything that's been submitted after the resolution for the pilot project has not been approved for use in the pilot project.

And we've got to resist, you know and I could start reeling off what happened in other states.

The first big example was the Georgia Senate election in 2000, was it?

Where they authorized the change in the Diebold software one week or two weeks before the election; had not reviewed the software; didn't even keep copies of it.

And then you had all the problems with the election for U.S. Senate.

When they went back six months later they couldn't even verify what was in the changes.

So I'm not in favor…

I'm opposed to just not following specific procedures for authorizing equipment, even if it's the ballot marking device which I just regard as a glorified very expensive pencil.

So I don't have a problem authorizing changes for use in the ballot marking device, but not this way.

That there has to be a procedure where it's submitted, where it's reviewed and then we approve it.

And the pilot project was not a blank check that people could just go change software, willy-nilly, without going through our testing and review process.

Now, I don't know if there's a way to resolve this in the half hour or hour that we have left before we are going to leave today.

As I say, Anna, I'm not against allowing the use of updated software for either of these systems, for the ballot marking devices.

But I do insist that your unit have a procedure for processing and reviewing these upgrades before they come to the Commissioners for approval.

>> ANNA SVIZZERO: We can get you a list of the specific changes that are in that software version.

>> DOUGLAS KELLNER: And show me that they have been tested, that they work. That's the whole point of our certification process.

>> ANNA SVIZZERO: I understand.

>> DOUGLAS KELLNER: Is that it has to work before we authorize it.

>> ANNA SVIZZERO: These changes will be part of what, the software that we are using in the functional test that we are going to be using at the end of the week.

We are not blankly releasing it to the counties without testing.

>> DOUGLAS KELLNER: Anna, when you come to the Commissioners and say you want authorization or certification, you and Bob Warren are saying to the Commissioners: You don't have anything to worry about. We looked at it. This stuff works. It's not going to be a problem. There are no glitches in it.

If you and Bob aren't saying that to the Commissioners, then I'm not going to vote for it.

>> EVELYN AQUILA: Would you say the organization is not at strict assert indication?

They are authorizing, allowing the use of this for now, but it's not certified.

Certified is a final procedure that we ... so if you see, is there a difference?

>> DOUGLAS KELLNER: Are we just.

(Overlapping speakers.)

>> EVELYN AQUILA: Bob's saying there's only one piece of it that is different.

>> DOUGLAS KELLNER: Are we going to set a precedent now where we are going to authorize software upgrades without looking at them?

>> EVELYN AQUILA: No, I think because the pilot program is moving on, maybe that could be why they are anxious to do it.

But I lean towards what you're saying.

I mean, we can't willy-nilly say yes, you can use the software here, there, and anywhere.

>> KIM GALVIN: If I may, I believe the Board has already authorized the use of the software for counties already in the pilot program. This is extending that courtesy to New York City specifically because they are the only ones.

>> DOUGLAS KELLNER: How could we have authorized this software for the ES&S pilot program if ES&S only submitted it to us on June 8?

I asked specifically…I mean, go back and look at the tape. I went through this and said what is it that we are certifying specifically? Model number and software version numbers.

>> KIM GALVIN: Whatever version you authorized, it's my understanding that's the version we're talking about.

Isn't it, Anna?

>> ANNA SVIZZERO: No.

>> KIM GALVIN: Oh.

>> DOUGLAS KELLNER: See…this is very important that we get this down now so that we don't get into the habit of a vendor walking in the day before the election and saying, "Here is the upgraded version, and we're going to use it."

>> ANNA SVIZZERO: We will revise. We will make the listings that we're required to make. We will do

>> DOUGLAS KELLNER: If you want to use upgraded software for the pilot program, you have to review it and bring it back to the Commissioners.

>> ANNA SVIZZERO: I agree. We will bring it back at your next meeting.

>> EVELYN AQUILA: Okay.

>> DOUGLAS KELLNER: I'm just talking myself. I'm sorry.

>> JIM WALSH: You make a good point. The bottom line is.

>> GREG PETERSON: I remember that meeting specifically where you went through each one of those things.

When you name them, the model, the company and so forth.

Right down the line.

If this is beyond that scope, I'm in total agreement with you.

>> JIM WALSH: I agree.

>> ANNA SVIZZERO: We will bring it back to you at your next meeting.

>> EVELYN AQUILA: So we will hold it off.

>> JIM WALSH: Thank you. Thank you, Commissioner Kellner.

>> DOUGLAS KELLNER: Now Paul has his draft…

>>PAUL COLLINS: Mr. Walsh, seeing how we're doing so well with our staff resolution

>> JIM WALSH: We have another one?

You're number nine.

I have to check these off.

Yes, Mr. Collins?

>>PAUL COLLINS: Seeing how we are doing so well with the staff resolutions and given I have had four days to prepare this, I have a resolution that I would like the board to consider.

In accordance with the request of Commissioner Kellner.

The intent, Commissioner, is to have some sort of mechanism where minor changes involving increased participation either of county already participating or should another county wish to join the program, can be accommodated by the Executive Directors because, obviously, this board meets but once a month and we are running out of time.

That is the intent of the resolution.

>> JIM WALSH: Would you care to read the resolution?

It's your handwriting and it is not officially entered into a motion.

>> PAUL COLLINS: I certainly can, Commissioner, if you wish.

>> JIM WALSH: Thank you.

>> PAUL COLLINS: Whereas the State Board of Elections and various counties are engaging in a pilot program for the 2009 election season which has been previously approved by the board, the Department of Justice, the New York Attorney General and the United States District Court for the northern district of New York, base upon participation levels known as the, at the time and whereas counties previously approved have expressed a desire to increase the extent of their participation and at least one county has since the approval of the

Since the approval of the board of the pilot program requested to be allowed to participate and whereas the federal court has ordered that any changes in the pilot program be immediately disclosed to the Department of Justice and whereas the Department of Justice has indicated that it would have no objection to increased participation by counties but would object to any decrease in the level of participation and whereas the situation is by nature somewhat fluid and a mechanism must be available to deal with needed changes in the pilot program to accommodate increased participation by counties already in the program and request for participation by counties not already participating.

And whereas, this is difficult for the Commissioner, I recognize, whereas the board recognizes that the state board of elections staff is knowledgeable in the specifics of the implementation of the pilot program as authorized by the board and the federal court and whereas it is impractical for the board to approve every change in the pilot program, now therefore be it resolved that the co Executive Directors are authorized to allow increased levels of participation for participating counties and to allow additional counties to participate in the 2009 pilot program upon their determination that such increased participation and participation are consistent with the purposes of the pilot program as previously approved by the board, but in no event may the co Executive Directors authorize a decrease in the level of any county's participation in the pilot program.

>> DOUGLAS KELLNER: All right. So moved.

>> JIM WALSH: We have a motion.

>> EVELYN AQUILA: Second.

>> DOUGLAS KELLNER: To the resolution. If I can just ask a couple questions. This is only authorizing increases in participation.

>> PAUL COLLINS: That's correct.

>> DOUGLAS KELLNER: And nothing else.

>> PAUL COLLINS: That is correct.

>> DOUGLAS KELLNER: Not authorizing changes in the safeguards that were drafted into--

>> PAUL COLLINS: No, Commissioner, it is not. I don't know that you have the authority to delegate that. That's why this is very limited.

>> DOUGLAS KELLNER: I have no problem.

>> KIM GALVIN: May I make one comment?

I agree that it is increases, but I can also foresee, say Herkimer, bad example, they have three towns but they didn't train their inspectors, they want to switch three polling sites, maintaining the same level of participation, not just increases, but changes in that as well.

That's what I foresee.

>> EVELYN AQUILA: County changes that do not affect the participation?

>> KIM GALVIN: Right, right.

>> PAUL COLLINS: I think that's essential, absolutely.

>> DOUGLAS KELLNER: Okay.

>> JIM WALSH: Everyone understands the resolution then? Masterful job.

>> PAUL COLLINS: Thank you.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Opposed? Carried.

>> DOUGLAS KELLNER: Anna, do you have one more resolution on the contract?

>> ANNA SVIZZERO: That was the resolution that came up late last week what Joe brought up.

>> DOUGLAS KELLNER: I so move the resolution.

>> JIM WALSH: Second?

>> GREG PETERSON: Yes.

>> DOUGLAS KELLNER: All of these HAVA resolutions, the budget legislation requires a vote of the Commissioners.

>> JIM WALSH: All in favor?

(All members responded "aye.")

>> JIM WALSH: Opposed?

(There is no response.)

>> JIM WALSH: Carried.

>> DOUGLAS KELLNER: We'll entertain a motion to go into executive session.

>>JIM WALSH: So moved. Second? All in favor?

>>ALL: Aye

>> DOUGLAS KELLNER: We are going into executive session to discuss enforcement matters. Is there anything else?

>> We have to name --

>>: And litigation matters.

>> DOUGLAS KELLNER: A couple of brief matters as well.

Okay.

Executive Session:

TAPE STOPS FOR EXECUTIVE SESSION

Meeting Resumes:

>> At the executive session we have taken action on the cases before us. Anyone have any comments to make? If not we have set our next meeting date for Wednesday, July 15th noon approximately, here

>> Exactly.

>> A motion to adjourn?

>> So moved.

>> DOUGLAS KELLNER: Wait! Anna, Anna, Anna

>> ANNA SWIZZERO: I ask the commissioners to reconsider while you were out did you have a chance to Counsel's office and the staff and if the commissioners are so inclined we can modify this resolution to reflect that the software as you approved it on May 12th would be the version that would be extended to the non pilot counties and we would modify this resolution by removing the references to the DS200 which is the scanner and changing the dates in the resolve paragraphs which will be the boards May 12th boards authorization of the pilot software

>> DOUGLAS KELLNER; I'm not saying that software upgrades for ballot marking devices would be authorized to the same extent as that software has been authorized for use with the pilot program.

Does that accurately reflect what we agreed to?

>> KIM GALVIN: I think so. Yeah.

>> DOUGLAS KELLNER: Do you want to read it back?

>> ANNA SVIZZERO: Software upgrades for the ballot marking devices be authorized to the same extent as approved for use in the pilot program

>> DOUGLAS KELLNER: On May 12th, 2009

>> ANNA SVIZZERO: Yes. Ok, thank you

>> DOUGLAS KELLNER: We should vote on it.

Motion made.

Seconded

All in favor Aye

>> (All) Aye.

>> ANNA SVIZZERO: Thank you all

>> Before we adjourn. I'm sure you noticed there was a glow about Greg when you entered the building today.

(LAUGHTER)\

>> TODD VALENTINE: It was fear!

>> DOUGLAS KELLNER: We are going to have a little cake in the kitchen afterward for anyone who can make it and if you can't, take a piece and put it in your pocket

(LAUGHTER)

And we will see you all next month.