

>> >> DOUGLAS KELLNER: Good afternoon everyone.

My name is Douglas Kellner.

Co-chairman of the state board.

I'll call the meeting to order and I'll ask my co-chair to introduce himself.

>> NEIL KELLEHER : My name is Neil Kelleher.

Co-chairman of the state board of elections.

>> HELENA MOSES DONOHUE: Commissioner.

>> EVELYN AQUILA: Commissioner.

>> PETER KOSINSKI: CoExecutive Director.

>> TODD VALENTINE: Special counsel.

>> ALLISON CARR: Deputy of operations.

>> LEE DAGHLIAN: Director of Public Information

>> GEORGE STANTON: IT director.

>> ELIZABETH HOGAN: Enforcement council.

>> (off mobile phone)]

>> Then I'll ask our guests to identify themselves.

Andy, would you start?

>> Andi, I'm an attorney --

>> Susan Cohen.

>> Citizens monitorization advisory committee.

>> Amy.

New York state League of Women Voters.

>> Chairman constitution party.

>> Jeff.

-- grass-roots effort.

>> -- Ogs.

>> Wayne Stinson.

>> Dennis Perry are ARISE.

>> -- division of budget.

>> Betsy swan, division of voters, New York state.

>> -- for persons with disabilities and citizens modernization committee.

>> --

>> Toni -- member of election defense alliance.

>> -- northeast coalition --

>> (off microphon]

>> NEIL KELLEHER: Welcome to everyone and thank you for coming.

I did submit corrections, but they have not yet been typed.

So I'll ask that that be laid over without objection.

No problem.

(Chorus of ayes.)

>> **NEIL KELLEHER: Then we turn to the unit updates.**

Todd we will start with you.

I guess you have the most news to report for the legal unit.

>> TODD VALENTINE: It's obviously everybody's aware that the Department of Justice has made a motion to enforce the court order that they had gotten in June of 2006.

And we need to come up with a response to that.

I think that is something that the board as a legal matter, you know, as far as generating our response, executive session, because we are responding to a lawsuit.

The motion has been before the court and we have to devise our strategy.

I certainly, Paul and I have read papers.

We got them basically yesterday morning.

They have been circulated and we're making an analysis.

The AG's office just got them.

They are trying to formulate a response.

So we ask them here to help get their opinion and I'd really like to see discussion of that in an executive session, because it's a response to a legal matter.

>> I'm not going to, because I realize I need the advice of the Attorney General's office, of you and of Paul.

And at some point the words which are out of my lips will come forward.

But only once after I had the talk to my fellow commissioners and the legal advice that we have here.

And that will -- then I will have something to say.

>> NEIL KELLEHER: Todd, what is the date that the papers are due, that our papers are due?

>> TODD VALENTINE: The return date for the motions are December 6.

To get our response together, I think we have got a couple weeks here to try to --

>> DOUGLAS KELLNER: So there is no fixed date for our responsive papers?

>> TODD VALENTINE: We can receive a schedule for the court for response.

I think it's 17 days before the return date I'm advised by the AG's office.

But those schedules are something that are usually -- the court, typically, they schedule promotion, so it's not always what is filed.

At a minimum.

>> DOUGLAS KELLNER: So there is no fixed date for the response?

>> TODD VALENTINE: Well, he said that he needs it 17 days after the order of the court.

>> DOUGLAS KELLNER: Well, that's the 19th, which is a little less than two weeks.

Two weeks from yesterday.

Okay.

I would suggest that we take up the issue of whether to hold an executive session at the -- after we finish the rest of the agenda.

Todd, do you have any other legal business to report?

>> TODD VALENTINE: Well, no.

>> DOUGLAS KELLNER: That's a fine answer.

>> TODD VALENTINE: Nothing more.

DOUGLAS KELLNER: Let's move on then to election operations.

sis sis.

sis sis Good morning.

Yesterday was election date.

The day was fairly uneventful.

No significant or unique issues arose.

A number of close races around the state so we had a lot of calls about potential impoundments and how boards should conduct themselves.

But we haven't heard that any of those have actually come to fruition yet.

So we will be prepared to support boards if they need that kind of help.

We continue to provide information to presidential candidates.

As you know, the petition period is ongoing for that process.

A number of contacts were made regarding independent candidacies and also how to become a write in for the president.

So we do provide that information regularly.

We've received, as you know, three responses to the RFP for a new testing authority.

The valuation team was the same as last time, with Allison Carr leading it and others it from the New York City board of elections.

Mr. Pesdec is on loan from the Office of technology.

The team visited the labs, reviewed the documentation that was provided by way of responses to that solicitation.

And Allison Carr as the review team chair will make a recommendation to the board later in this meeting.

We continue to work towards being prepared to deal with certification.

Terry Brazen, our unit who is here today and -- from the IT department have been revising our portion of the Web site, so that information there is much more accessible by way of being identified as new information.

We have also archived information there to eliminate a lot of the confusion and will continue to revise that on a regular basis.

We're working on a number of in-house processes.

We have identified a question and answer process for vendors when they need clarification of a regulation or a statute.

They will be providing those on a form and writing to us, we will be responding in the same way.

We have a 48 hour turn around for drafting those responses, so that we can be very timely and then we will be posting those to our Web site in a program similar to what the EAC uses.

We are also working on identifying concepts for acceptance testing and the draft budget proposals for that, trying to identify resources and looking for alternatives for how that process can work.

And that's an ongoing project for us.

We did conduct our vendor voting system conference call, since our last meeting.

No new issues arose from that call.

It was a fairly brief session.

We -- our voting equipment contract -- sorry, solicitation, is ongoing.

Questions were due from vendors on the 2nd of November.

We have responses to those questions that we have to draft that are due on Friday.

So Allison and I will be working on those after today's meeting and we will share that draft with you so that we we can provide those responses to OGS.

The return date for the bids has been moved to the 23rd to allow for the vendors to absorb the ballot marking device specifications that were provided to them late last week.

So that calendar has moved by about 8 days.

And I don't have any other new information to share.

>> Anna, how many vendors have applied?

sis sis Five.

>> How many do you expect by the end of the period will apply?

sis sis It's hard to say.

It's an ongoing recruitment.

They can apply any time.

That was the first, submit a letter of intent but anyone can submit at any point in time.

>> So you received five almost immediately.

>> Yes.

>> Would you tell us who the five are

sis sis liberty, Sequoia, Avanta, Devo, which is now called premier, and ES and S.

Those are the ones that we heard from so far.

>> The major ones it seems like, Huh?

sissis And I believe all of them are submitting bids for lots 1 and 2.

And Populex submitted a letter of intent to submit only for lot 2, lot 2 being the ballot marking devices.

>> DOUGLAS KELLNER: Any other questions?

All right.

Then we will move to Lee Daghlian for the NVRA public information office.

>> LEE DAGHLIAN: Thank you.

Aside from the normal business of taking phone calls, which there have been many of leading up to the election, and answering e-mails,

we continue to work on the County funds program for accessibility and outreach, striving to complete or have counties complete their for for fixing poll sites that need the work.

We're making steady progress.

New York City required an extensive explanation provided by Dierdre, for many questions.

They have received that a few days ago and we suspect that the commissioners in the city will approve of the project and we will be able to complete that with the city fairly soon.

Other counties, we have had some problems of getting information back, have received a rather harsh letter recently from us to try and prompt a response.

We hope that works.

Otherwise, we're -- we seem to be on schedule to complete, and we're going to gear up soon for the water outreach portion, poll worker training portion of the program.

And folding into that of course is our first meeting with the contractor, SOE, for poll worker training program.

That will be on the 29th of November, here, to lay the groundwork for how we will proceed with developing that program, particularly in light of the requirements of justice -- the justice department, and the our own regulations.

Aside from that, I think that's all we have been doing lately.

>> DOUGLAS KELLNER: Any questions?

Thank you, Lee.

>> LEE DAGHLIAN: You're welcome.

>> **DOUGLAS KELLNER: We will turn to campaign finance, Elizabeth Hogan.**

>> ELIZABETH HOGAN: Commissioners.

An update on the ongoing projects that we're dealing with at campaign finance.

The first is the procedure and development for the administrative complaint process.

Since the last board meeting we have had two multihour meetings with my staff in terms of drafting the procedural draft and also developing the forms.

We have another meeting scheduled with them this Friday, which I think should wrap up our dealings in terms of getting that initial work product.

And as I think I talked about at the last meeting, the next thing we will do is sit down and actually write the procedures for staff in dealing with the Hobbet complaint

and provide some educational process for staff, so that they know what they're doing.

And also information to the counties.

Because informal complaints may be made to the counties also, so we want to assure that there is a consistent process.

The electronic filing project, we have -- I talked to OGS about how the to process that contract, the actual provider that we're dealing with is a subcontractor of a preferred source,

and the process then is for the preferred source to craft a product to share with OGS.

So we're in the process of doing that.

We have had a meeting with OGS and have reviewed a draft process server RF P we find that OGS is taking it back to actually make the finishing touches to it

and then they will send it back to us for final approval of whether it addresses our needs.

So we're close to finalizing our language for that.

The campaign finance unit has been very busy obviously at this time.

The phone volume is up.

The '06 election cycle project is ongoing and it's on schedule in terms of the timeline that we established.

I think it got setback a couple of days because of a little glitch, but we're actually projecting a report to council I think the third week in December, and that's on schedule.

The '05 corporate contribution project is on my desk.

I am working on it.

I have not had an opportunity to get it to the point where I wanted to present a memo to the board for this meeting.

But I will continue on that.

We have, pursuant to the six positions that were approved by the board, I think in August, we have hired two auditors and hope to have them in place by the end of this month,

at which point we will sit down with them and develop the work in process of how they are actually going to deal on a day-to-day basis in the auditing function.

We have additionally worked on writing a job description for the additional staffing that we have a budget line for.

And we've -- actually, Bill and I have -- we have worked on that.

We have presented it initially to Peter and Stanley to take a look at.

They had some comments.

It's come back to us, and we're in the process of refining that.

So I think we actually have a meeting scheduled, Bill and I, to sit down tomorrow morning to try to finish that up.

And I think that's it.

>> DOUGLAS KELLNER: Thank you, Liz.

>> I would like to pass this on to you.

It's a complement.

I was stopped by someone from the Town of Stony Point in rockland County, who had a question about the campaign finance.

Called your department, and they said they were the nicest people and the most informed that they have ever spoken to.

So I just thought I'd like to pass that on.

>> ELIZABETH HOGAN: Thank you,

>> Maybe I should pass on a complement, too.

From a former assembly man who had a problem.

He is elderly. he had a problem over a \$50 thing and I spoke to Liz about it, and who was it, Ms. Lions spoke to him.

>> >> ELIZABETH HOGAN: Patty Lloyd.

>> He said it was wonderful.

He didn't know a state agency could be so efficient.

So I just want to say thank you.

Too.

It's nice to hear somebody say something good about us once in a while, Liz.

>> DOUGLAS KELLNER: Liz, could you tell us what the status is of the corporate over contributions investigations?

>> ELIZABETH HOGAN: The staff had done all of their preliminary review.

When I took the packet, there were a number of questions that I wanted to get the answer to, because I didn't feel that just taking the information in the form it was in

and writing up a memo identifying what appeared to be corporate over contributors was really the appropriate thing, because a lot of the reporting, they weren't, in fact, over contributors.

But the receiving committees had in many instances reported the contribution incorrectly.

And so the committee or the corporation may have been identified, but in fact it was an error.

And so it appeared that they were over contributors, but they weren't.

There were a number of instances where a corporation actually a subsidiary corporations made the contribution.

And from the corporation's end it wasn't shown correctly.

So, the staff worked very hard to try to contact corporations, contact committees to have them amend their filings.

And what I have on my desk now are all the files which I'm doing a final review on in order to write a memo to the commissioners on the small actual number of corporations who appear still to be over contributors for that year.

>> DOUGLAS KELLNER: Well, I appreciate you following it up.

But even if it's small, certainly those parties I'd like to see --

>> ELIZABETH HOGAN: Right.

>> DOUGLAS KELLNER: That we do appropriate enforcement.

>> ELIZABETH HOGAN: As I said.

It's on my desk.

I just didn't have a chance to get it in a final form for today.

But I'm sure by next meeting it will be ready.

>> DOUGLAS KELLNER: Any other questions?

All right.

Then George Stanton for ITU.

>> GEORGE STANTON: Yes, I think the last time we met, we were finishing up the audits for New York City on the statewide database.

I'm happy to report that all of the audits statewide, including New York City, were finished well in advance of the general elections, so everybody could print their poll books from audited records.

So I consider the system to be complete at this time, up and running.

I'm happy to report that I think we completed it essentially on time and well below the 15 million budget we were talking about a couple years ago.

And I'll get a complete budget report available for the board hopefully for the next meeting.

Now we're just monitoring the system on a daily basis, tweaking things that we can make work better.

We're still working on a couple of enhancements with Sabre to do the voter lookups and the poll site lookups from the public Web site.

In the process right now of negotiating the service level agreement for the first year's maintenance with Paul's help.

And the steering committee is -- we just started talking about a plan for monitoring the County's maintenance activities on a monthly basis, and what we're going to do to just keep track of how people are using the system.

And other than that, we're just doing our normal work of supporting the campaign finance and the rest of the units in the agency.

>> DOUGLAS KELLNER: Any questions?

All right.

Then we will turn to old business,

which is the proposed resolution on setting of the board policy for fees regarding open source software.

I have additional copies here.

>> Mr. Chairman, I had some qualms about this at our last meeting.

Since then I've had a lot of -- I must say that David Copperman has been a great person to explain all of this to me.

I was under the misconception that the whole fee was asked to be waived.

It isn't the whole fee.

It's merely the fee to develop the source codes.

And I think that makes a big difference to me.

We need to have other -- other ways to look at how we're going to solve this, you know, the source code problems.

And be able to move forward.

And I think this is one of those issues that can help us.

And I support it.

>> DOUGLAS KELLNER: Thank you, Evelyn.

I'd like to just speak briefly on it again, which is that the purpose here is to establish a policy that is an objective policy that can be applied to any vendor who will meet the criteria that we set forth.

And as Evelyn mentioned, the purpose here is to cover the cost of testing for certification purposes.

Source code for which the vendor has no proprietary rights, because the vendor is using open source.

So that whatever the vendor uses can be copied by any other vendor.

And it seems that as a matter of public policy, it doesn't make sense that a vendor who is not going to be able to retain proprietary right in the source code would have to still nonetheless pay the cost of testing that source code.

That it defeats the whole purpose of promoting the use of open source code rather than proprietary source code.

The policy that is drafted here is written in a way that any vendor could use it and would then set the state with a very modest encouragement for vendors to use open source rather than proprietary source.

It was also written carefully to be consistent with the language of the appropriation that the legislature made last year, that allowed the board to pick up some of the cost of certification testing.

So, for all of these reason, I think that it's a positive step forward and that I would hope that we are prepared to vote on this today.

Oh, I should add that we did post it three weeks ago, and there have been no negative comments, and we've received a modest amount of support from legislators in both political parties and from good government groups.

>> I guess if this is open.

I had a comment myself.

I guess we were looking for comments from the public and I think that was, you know, an appropriate way to go.

I guess my only issue is we didn't get a lot of substantive comments.

I mean, the comments largely were supporting it, which is fine.

But I think the issue that we are facing is not just, you know, the benefits of open source, which I think have a lot of benefits.

The question is whether the state should fund that particular aspect of our program, which would be a, you know,

a break from what we have ever done before as far as the state actually underwriting the testing of a particular type of software.

So I guess it's just a matter of whether we feel we have enough information to do this.

We have talked in the meantime to Nicetek about our, you know, our consultant on these issues about, you know, the technical issues and also the, you know, benefits to the state.

And I guess for my own purpose, it would be helpful to know better substantively what the benefits to the state are as far as, you know, the state actually underwriting the testing of this,

so that we aren't starting a precedent that we're going to have to follow in a way that maybe we don't anticipate that might end up, you know, impacting things we don't anticipate.

That's all.

>> Has Nicetek responded?

>> Well, we haven't gotten anything formally from them yet.

But I think it would be helpful if we could, just to get a better impact on the impact of the entire proposal.

>> DOUGLAS KELLNER: There is no question that it would be better to do this on a national basis, that this is really something that the Federal Government ought to do to encourage, as a matter of national policy.

But in the meantime, we do have a very expensive certification process that becomes a barrier for entry,

and I believe that this proposal is a step forward in trying to promote the use of open source software and is a reasonable approach.

I'm glad to hear that we now have commission Aquila's support for the motion.

But I'm also realistic that if we don't have three votes yet, that it's not ready.

>> Are you asking for us to lay it over?

>> DOUGLAS KELLNER: I'm turning to to commissioner Donohue --

>> At this point you don't have my vote.

>> DOUGLAS KELLNER: Well then we will lay it

over. All right.

Thank you.

We will keep trying.

All right.

So then we will turn to new business.

The first item on new business, I think, because we have greater discussions, I'll try to be very brief, that last week I had the pleasure of attending a what was called a summit meeting on auditing, auditing elections.

We also had two staff members from the state board who attended with me, Bob Warren from the election operations unit and -- oh, no.

Kate Arcino, from the NVRA unit.

And I found that the -- this conference was designed to get election officials to focus on the issues of auditing.

Much of it was about the process of auditing elections, which is certainly very relevant because New York is one of the first states that added to its statutes a comprehensive auditing provision,

that's section 9-211 of the election law, which was part of the 2005 election modernization and reform act.

And that statute requires a random audit of 3 percent of all of the voting machines in a County, and then provides additional procedures to ensure that the -- any voting apparatus that we use is counting the votes properly.

The New York statute it turns out has become a model that there are a number of other states that have looked to the New York statute.

Some have copied it almost word for word.

And there are perhaps a dozen states with auditing statutes before their legislatures right now, and the next step for us is the implementation of that statute.

And we have very detailed regulations on that, which are still out for public comment.

And it was helpful to find out what some of the other states who already implemented their auditing statutes have run into and how to make the process faster and more efficient.

And I believe that Kate Arcino and Bob Warren will be helpful in providing reports on that to perhaps improve our regulations.

Another issue that came up at the conference is the fact that just auditing election results alone is not just the solution, because you can very well fine tune your election count.

But if on the front end up problems with voter registration system or with the operations of the polls by the inspectors on election day,

that that is going to affect the accuracy of the result, and you may have a very accurate count but if your registration and your election day operations are not operating fully up to speed,

then that's going to affect the count in ways that are also important to detect.

So one of the things that sort of evolved out of this conference is that there really should be two kinds of audits.

What they're calling hot audits, which are the immediate audit for election results, in order to determine the winners of close races.

But then there should also be cold audits where in the reflection of the time between elections that the board is reviewing the way auditors review operations to make sure they're functioning properly.

And of course the key to an audit is doing a random sample and then looking at it to see whether it's functioning properly.

And that is, in fact, a duty which is assigned to the state board of elections by statute, because the election operations unit is completely consumed with the expertification process in order to comply with Habba.

I personally think it's understandable why that function has sort of been set aside, and that we have not devoted significant resources in the last two years to doing in a positive way random checking of election operations throughout the state and reporting on how to improve them.

And I would hope that we keep in mind for the long-term that once we do get over the hurdle of implementation of the help America vote act,

that we go back to the -- back to looking at that statutory mandate to do what we can to assist the County boards in evaluating operations and looking for areas of improvement.

And we certainly have been doing some of that with our con-- and we certainly have been doing some of that with our conferences and with some isolated projects.

The other thing with respect to audit that I will be raising is that several of us noticed that there are 600,000 fewer voter records in Ni CE voter today than there were in the records a year ago.

And on the face of it, it appears that that was proper, that what we have done is found all these duplicates and purged them out of the system and that NICE voter has done exactly what it's supposed to.

But I'd like to assign a small team and I'll layout a memo for this to at least audit that by taking 50, 100 random records that were purged,

and to confirm that in fact they were properly purged, so that we know that our -- give us additional confidence in the accuracy of the NICE voter registration database.

Thank you for bearing with me to hear that out, and -- but I did want to give that report.

>> EVELYN AQUILA: While we're talking about the running of election, Bob and I yesterday were in New York County, and at the New York City board as well as in polling places.

But one of the great needs of, in this state, is inspectors.

We are losing inspectors.

The inspectors who volunteer now and come forward are senior citizens for the most part.

Most of the machinery they are going to be receiving is very technical, it's going to be very electronic driven.

And I have brought this up at the board way back when but I think it's something that we need to officially look into, to reach out to the SUNY and to the City University

and ask them if they could put into their political science program or to offer any student who volunteers to be an inspector, a one credit.

One free credit.

Or maybe two.

Whichever they would think would be proper.

But I think we need a letter from both Peter and Stanley to go to both of these -- presidents of both of these universities to ask them to help us.

I mean, the second thing would be to go to the legislature, since these are both universities that are controlled by the legislature to some degree.

But I don't want to go that way.

I think we should first ask.

I think there is a chance that we will get a positive -- if anyone disagrees with me, please speak up, that we will get a positive reaction,

and maybe if we get a positive reaction to them, we could reach out to the rest of the schools and universities in this state.

Because we have to do something.

They were telling us yesterday, you know, sometimes they will have as many as 300 inspectors don't show up.

Where do they get 300 inspectors to fill those places?

Because they don't have waiting lists anymore.

Years ago, an inspector didn't show up, you had a waiting list.

Someone else came onboard.

And the staff is fishing for inspectors the first part of the more morning.

And I heard this throughout the state, not just in New York City, certainly in Kings County I heard it, a dire need for inspectors.

And we're not going to get the seniors -- I think we have emptied the senior pool.

We have to reach out to younger people.

Most of the mothers that used to do this years ago for their Christmas club money, whatever, they're working today.

We no longer have that.

Voting is -- election day is no longer a holiday.

So next year we have to realize that between 5 and 6 million people vote on election day on the presidential election.

And if you'll have two inspectors sitting in apology place, those people could be waiting online for three hours until that situation is figured out.

So I'm offering it just to say I think we have to do something to help out the -- that situation.

We can't just say that's the County situation.

There is no way the State University or the City University is going to respond to a County commissioner.

But I think they will respond to this board.

And I'm asking you if my fellow commissioners agree.

>> Evelyn I proposed this many years ago.

>> EVELYN AQUILA: We both did, I think.

>> I'll tell you how it worked.

I actually was requested in the '80s to come be a guest instructor at Rockland Community College in the political science department.

I did this.

Then it stretched over to the crime national justice department.

It was very interesting.

And we got -- they had a very wonderful, wonderful head of department.

And we got several kids, totally involved in this.

And they were given credit, the same credit they would get for a research paper or for time spent in the field.

>> EVELYN AQUILA: Yes.

>> HELENA MOSES DONOHUE: And it worked.

It was a very small-scale.

But I don't see any reason in the world why our state and our community colleges wouldn't be interested in something like this.

>> EVELYN AQUILA: Well, I did it at Brooklyn in the 80's and St. Francis and St. Elizabeths College.

And many kids volunteered and many came out of the PACs that they had.

But the truth is we need a much more broader selectionation than just you and I, Helena

>> HELENA MOSES DONOHUE: It has to be a request from here.

I talked to a lot of people who work on the polls.

They come into my store and it's a meeting place.

>> EVELYN AQUILA: Yes.

>> HELENA MOSES DONOHUE: And they're terrified at the thought of some of this machinery that may come in.

And we're going to have to tap the resources that are our, the kids.

I mean, I've got a granddaughter who is four years old that could teach me things to do on the computer.

And I think we have to utilize all of this.

And I think the publicly funded schools are a perfect place to start.

>> EVELYN AQUILA: I think they're the first place we have to start.

The rest of the commissioners agree with us?

>> HELENA MOSES DONOHUE: I agree with you.

>> EVELYN AQUILA: Thank you.

>> I certainly conquer.

I always said 70 percent of all the problems in election administration are due to the recruitment and training of inspectors.

And the people we have are under appreciated and under compensated.

And anything we can do to improve that, I think is worthwhile.

So can we turn to Peter and Stanley and just ask you to take a look at this and perhaps assign some staff to draft a letter and see what would be productive to follow up on.

>> Sure.

>> Sure.

>> EVELYN AQUILA: Thank you very much.

>> We're not paying them enough at the state.

Have you found that to be a problem?

>> Well, that's what they tell me.

>> You know, one experience that we had in New York City, in New York City, there was a very significant shortage of inspectors in the mid 1990s, where much as 30 percent of the positions were unfilled.

And we went to Mayor Guiliani and layed out a plan for him.

And the pay schedule was increased from \$130 for the 16 hour day, which at the time was below the minimum wage, to \$200 a day.

And the recruitment problem disappeared overnight.

That by increasing the pay by 50 percent or more than 50 percent, suddenly we had an excess number of applications.

As Evelyn noted, there was a large stand by pool then.

>> EVELYN AQUILA: Yes.

>> DOUGLAS KELLNER: The commissioners could be choosy about inspectors.

They didn't have to hire everyone who came in, which is always a big problem if you have to take everyone, and you have some incompetent people in the pool.

So I thought it was a big -- it was a big plus when Mayor Guiliani did that and of course the problem is keeping up with inflation.

More recently, I think what the city board has been doing has been increasing compensation for training.

>> EVELYN AQUILA: Yes.

>> DOUGLAS KELLNER: And that has been a good incentive to get people to actually go to the training classes.

But the bottom line though is if it's something worth doing, it's worth paying for.

>> NEIL KELLEHER: Apparently there are a lot of inspectors out there that are no longer registered, who are well-trained and perhaps additional compensation might be part of the consideration.

And you might be surprised how many inspectors suddenly would be interested again.

>> EVELYN AQUILA: What I'm hearing mostly from inspectors, and people in my own polling place and things, is that they are elderly, they are older,

and they are afraid of like what are these things going to be, I'll probably have to give up when they come.

And they don't even use cell phones, let alone be in a room with electronic devices is scary to them.

They might find out a week later they can do these things terrifically.

But at this point they are very concerned.

So I think better compensation, absolutely.

That is something that we will have to speak to the legislature about.

But to attract the young people, that's important, too.

Because we will need a good handful of them who know how to do every single -- like you say, my grandchildren could run -- the things they can do are unbelievable.

>> DOUGLAS KELLNER: Since we are on the subject, could I throw out one little pet suggestion that I've been making, which is that service as an election inspector should count as jury duty.

>> HELENA MOSES DONOHUE: I never thought of that.

But that's awesome.

I like that.

>> DOUGLAS KELLNER: In several states, the title is not election inspector, it's called election Juror.

And they are called the election Jury.

And I'm not suggesting that inspectors be exempt from jury duty.

I'm saying that service as an inspector should count as jury duty.

And that's to ameliorate the people in the Office of court administration who I think correctly object when people are exempted from jury duty, because that is an obligation that we all share.

>> Our really elderly inspector, though, they don't come under that.

>> DOUGLAS KELLNER: Well, but if --

>> But it's a good idea.

>> DOUGLAS KELLNER: If service as inspector counted as jury duty, then that's another way of dealing with the problem and would it increase the ability to recruit qualified people.

I just throw it out as a suggestion along with the others.

>> It would require legislation to begin.

>> DOUGLAS KELLNER: Yes, that could require legislation but some day I can draft it or somebody else can sit down and write it out.

Well, this was a productive discussion.

>> On those last two points, on a substitute for jury duty and --

>> DOUGLAS KELLNER: Know that it counts as jury duty.

>> it counts as jury duty.

Not a substitute.

>> And additional compensation, we can offer it to you when Todd offers our legislative package.

>> EVELYN AQUILA: Right.

We could include that.

Do we need a vote for CUNY and SUNY?

I'd like to make a motion that our Executive Directors send a letter to both CUNY and SUNY, asking them that we would like to sit down with them to work out a program to offer credit to all students who volunteer for election duty.

>> DOUGLAS KELLNER: Those in favor say aye?

[Chorus of ayes.]

Opposed?

The resolution carries.

Is there any other new business?

>> Yes.

>> Yes.

>> DOUGLAS KELLNER: Commissioner Donohue?

>> HELENA MOSES DONOHUE: I would like to make a statement on behalf of -- I shared this with our counterparts over there.

And just so that there were no surprises, and everybody knows as a point of courtesy.

We are responding to a request that we received from the Albany board of elections, -
- from the Albany board of elections which simply asked

could we advise if there exists a state board of elections formal protocol with INS to assist in verifying citizenship for County boards of elections?

Well, this has to do, and a lot of questions have come up regarding the Governor's proposal for driver's licenses to be changed.

And I'm sure there is not a person that listens to news that doesn't know what this is all about.

So Neil and I would like to make a statement that we have received this request from the commissioners of the Albany board of elections

about their authority to check with the federal immigration service to validate the citizenship of voter registration applicants.

This request comes in response to the Governor's new policy initiative with the department's -- the Department of Motor vehicles.

Every person who comes in to a DMV office for a driver's license is offered an opportunity to register to vote.

DMV is the state's largest single source of voter registration applications.

In 2006 alone, they sent to the Counties over 113,000 new voter registration applications.

As you can see, while this change is designed to allow noncitizens to obtain a driver's license, it could lead to a large number of unqualified registration applicants submitting the voter registration form.

Unfortunately, there is no procedure for County boards of election to verify citizenship status.

We urge the Governor to reconsider his new policy in light of the potential impact on voter registration.

And I would once again say that this proposal comes from commissioner Kelleher and myself.

>> EVELYN AQUILA: The pool for the democratic side, you did call the bullet pool --

>> Yes, when that letter came in to Peter and Stanley, Stanley asked me to look into it.

I called the commissioner Kline and articulated that, you know, we don't have a protocol with INS and if you look at the whole statutory scheme,

a voter is allowed to register by simply swearing that he or she is a citizen of the United States of America under penalty of perjury.

It's right on the form.

Then of course the issue becomes how do I identify that this individual is indeed the person whom he or she says he should be?

And I didn't think that commissioner Kline had an understanding of the process.

So I pointed him to the section of the election law that covers that.

And obviously one of the many Indicia of identification that the statute countances is a driver's license.

Another is a Social Security number.

And yet there are about six other pieces of identification that are satisfactory under the statute.

And I explained that to commissioner Kline.

Among the other pieces of identification that are satisfactory are a copy and I'm quoting from section 5-210 of the election law, a copy of a current and valid photo ID.

A copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.

So it's an issue of identification that has to do with driver's license.

The issue of citizenship has historically been based upon the voter taking the oath that says I'm a citizen of the United States of America and I, you know, I do affirm under penalty of perjury.

So that is what I explained to commissioner Kline.

That was my response as a result of Mr. Zalen having asked me to address the matter with the Albany board.

>> This has nothing to do with voter identification but I supported the Governor's position because if a person has a driver's license, they have to get insurance before they can drive a car.

And if there is an accident, the person they hurt then has -- can sue them.

But you can't do that if the poor guy gets out of the car and says I don't own the car, I don't have a driver's license, I can't do anything.

So that's the reason why I still think it's a good idea.

It doesn't answer the question of the Albany law and I know.

>> And I'd like to clarify that statement.

There is absolutely nothing that a person, when they register -- when they're getting a license, has nothing to do with insurance.

>> EVELYN AQUILA: But if they want to have a car, they have to have insurance with a license.

>> HELENA MOSES DONOHUE: But they don't have to have insurance for more than 30 days.

Because that thing goes into the motor vehicles department and if they don't pay their bills -- let me tell you something.

I have my own feelings on this whole thing which I'm not going to get into right now.

>> EVELYN AQUILA: I don't want to get do into this right now.

>> HELENA MOSES DONOHUE: The only thing we should be discussing is the impact on the voter --

>> EVELYN AQUILA: Right.

You're right.

>> HELENA MOSES DONOHUE: And there is no way.

>> EVELYN AQUILA: My answer was an emotional one.

I'm not answering that.

>> DOUGLAS KELLNER: I simply thank Paul for going into that and emphasizing that the voter registration form has a specific question on it where the voter has to check off yes or no.

I am a U.S. Citizen.

Plus the form has the oath immediately above the voter's signature that says that I am a citizen.

And that has been the procedure by which people have registered to vote since voter registration was initiated first by personal registration where they had to go to the actual poll site to register

and then in the 1960s, when we extended it to registration by mail.

And the one problem has nothing to do with the other.

Because the fact that somebody goes to motor vehicle and gets a driver's license, they still have to answer the question under oath.

Are you a citizen or not in order to register to vote?

>> Well, every time we pass some of these, weakened legislation things, we take away another form of identity check.

Originally, naturalized citizens used to have to put the naturalization number when they got their citizenship.

Then that was taken away, because it was an invasion of privacy.

Social Security was the last thing.

There has got to be some way to check.

That's an awful lot of potential voter fraud.

And that's going to end up in our lap.

That's the only thing I'm looking at.

>> EVELYN AQUILA: We might reach a point where we do something, you know, to support.

But I don't know.

I don't know.

I happen to support the position.

I think it's a good one.

And ...

>> NEIL KELLEHER: What is the track record of the people who investigate these people who are lying when they say they're a citizen?

>> DOUGLAS KELLNER: When you say "These people" it's always a troubling statement, Neil.

>> EVELYN AQUILA: A person who does that.

[Laughter] >> DOUGLAS KELLNER: Certainly, in my experience, when I was a New York City commissioner, there were occasions where we uncovered fraudulent voter registration.

I don't think it was widespread, but it was investigated on a case-by-case basis where appropriate.

And I don't think that there were more than half a dozen cases that ever turned out to be true.

But they were based on real allegations of people saying we believe this voter was born in the Dominican republic, not in Puerto Rico and therefore should have been naturalized.

But those were case to case -- case-by-case investigations, based on probable cause.

The idea to just assume that large numbers of people are lying on their voter registration applications and committing fraud, I don't think there is any evidence of that.

>> --

[Applause]

Because they violated.

>> EVELYN AQUILA: Pardon me Helena?

>> DOUGLAS KELLNER: Your objection is the fact that there are illegal immigrants present.

But your suggestion is that someone who is not a citizen should vote.

>> HELENA MOSES DONOHUE: Well, it opens up a real window of opportunity for that to happen.

I mean, that's the way I look at it.

>> EVELYN AQUILA: Well, sometimes --

>> DOUGLAS KELLNER: Are you aware of any noncitizen who is registered to vote or voted fraudulently?

>> HELENA MOSES DONOHUE: No, because if I were, I'd do something about it.

>> DOUGLAS KELLNER: And that's why I think this is a false issue.

>> HELENA MOSES DONOHUE: I disagree with you, I disagree with you on a lot of things, but I disagree with you on this one in particular because there is no source to check anything out.

INS is under staffed, underfunded, to do even what they say they should do right now.

>> DOUGLAS KELLNER: So your complaint is with the Republican president who underfunds INS.

>> EVELYN AQUILA: Let's not get that into a political issue of this board.

>> DOUGLAS KELLNER: Well, I suspect that you are.

>> HELENA MOSES DONOHUE: No.

I'm not.

I think you're wrong.

I think you always think that.

But I think you're wrong.

And I really would like a little more of an ability to be able to check and see if someone is actually a citizen before they're handed a registration to vote.

>> EVELYN AQUILA: Well, maybe by the time this becomes a real policy of the state, I don't think it's a policy already.

Is it already active?

Is there legislation?

>> DOUGLAS KELLNER: I have a question.

Are you suggesting that this be done for every registrant or --

>> HELENA MOSES DONOHUE: Well, my feeling is I have no problem with a fingerprint.

See, if I had nothing to hide, why would it bother me to have a fingerprint when I register to vote?

That's truly an honor and something that you either earn by becoming a citizen, or you were born here and you are a citizen.

I think -- I think it should be protected.

That's my feeling on it.

>> DOUGLAS KELLNER: All right.

Well, we have had a discussion on it.

>> NEIL KELLEHER: If all else fails, at least you uncovered some misbehavior on the part of the president.

[Laughter]

>> DOUGLAS KELLNER: I think that's the least of it, if you started there.

All right.

Is there anything else for new business?

>> Yes.

>> I have an issue.

>> DOUGLAS KELLNER: Yes?

>> The new voting system testing laboratory.

>> DOUGLAS KELLNER: Okay.

And that we have to do in executive session, right?

>> No.

We do not.

We don't have to vote on it in executive session.

I would like to make a proposal to the board to accept the evaluation team's recommendation.

If there is further discussion to be had, we will have to go into executive session.

But, I would like to tell you that this is a recommendation on RFP number 1369.

The purpose of that RFP was to seek a qualified contractor to provide the State of New York with voting system testing services.

A qualified contractor was defined as one that is is accredited at this timed to test to the 2005 voluntary voting system guidelines.

On October 12 we received three bids.

We set up an evaluation team which as Anna said was the same team that we used before.

We reviewed the technical documentation that was sent by each of those three bidders.

We conducted site visits.

And attended oral presentations.

After we did our scoring on the technical proposals, OGS calculated the cost scores.

When the two were added together, the winning bidder was Sis Test labs of Denver Colorado.

So the evaluation team to like to recommend that the board accept the evaluation team's winning bidder.

>> DOUGLAS KELLNER: Is there any further discussion on this?

>> EVELYN AQUILA: Only to thank the evaluation team for running around half the United States in six days and I thank you very much.

And you did this before, and it's hard work and it's appreciated by the members of this board.

>> Thank you.

>> EVELYN AQUILA: Absolutely.

>> If you are prepared to vote, I do have a resolution prepared for your signatures for today.

And as you just raised, commissioner, it was a tremendous amount of work.

Now, Bob brown and I were on the committee for the state board of elections but we had two members who were outside the state board who were on the team,

Bob Pesdec for the Office of technology and John O'Grady defrom theNew York state board of elections.

Those two expended a great amount of time and they did it on top of their ordinary workloads.

And I know that the board asked before that letters be prepared thanking Bob Pesdec and John O'Grady and in addition, John's boss, Ellen Kettleman who suffered without him being in the office.

Those letters were prepared be Terry breeze and she has those for your signature, whenever you're ready.

>> Great.

>> DOUGLAS KELLNER: Well, I think we all thank you for doing such a good job and putting in the extra hours to get this done on time.

And we should remind the justice department that people put in a lot of over time in order to make this happen on an expedited basis.

>> I think we have to thank OGS, too.

>> Absolutely.

>> DOUGLAS KELLNER: Do you have the text of the resolution that we're voting on?

>> We do.

If you accept Sistest labs as a winning bidder, you have to fill in a that line.

>> Resolution, the members of the state board of elections accept the recommendations every technical evaluation team to award RFP 1396 for independent testing authority services

for voting systems examination and certification testing to the winning bidder [based on overall cost and technical scores]

>> DOUGLAS KELLNER: And I take it the name is --

>> The name is -- >> DOUGLAS KELLNER: The name is in the report that you provided to us.

>> That's correct.

>> DOUGLAS KELLNER: And you read that written report.

>> Yes, that is correct.

>> Do you want to call the vote?

>> DOUGLAS KELLNER: All right.

Those in favor, say aye

(Chorus of ayes.)

Opposed?

The resolution is adopted.

Why don't we sign these on the way out.

>> That's fine.

>> DOUGLAS KELLNER: All right.

Now, before we -- Bob?

>> The only other new is the 6210 technical amendments that are in your packet for approval.

It was required before we get sign off to actually post and start the 45 day comment period.

>> DOUGLAS KELLNER: These were basically typographical changes that were suggested in the process by, what is it, the Governor's Office of rules and regulations?

>> Regulatory.

>> DOUGLAS KELLNER: I'm sorry.

>> So we actually need a vote on --

>> DOUGLAS KELLNER: And so there are no substantive changes.

There are just grammar and similar types of changes.

All right.

Any questions?

All those in favor say aye?

[Chorus of ayes.]

Opposed?

All right.

That is done.

The next item on our agenda are the enforcement determinations.

Are there any of them that any of the commissioners wish to speak about?

I'm prepared to vote on them based on the written reports.

>> No problem.

>> DOUGLAS KELLNER: All right.

So I move that we approve the preliminary determinations in CMP 05-59, 05-78, 05-86, 05-90.

And the final determination in CMP 05-54.

>> Yes.

>> DOUGLAS KELLNER: Those in favor aye?

[Chorus of ayes.]

Opposed?

So that is approved.

All right.

So the next issue is our executive session.

On the agenda was an item, executive session personnel matters.

Are there any personnel matters that that were being proposed for the executive session?

>> I think we put that on in case there is any.

>> DOUGLAS KELLNER: All right.

Then the motion is to go into executive session to discuss the litigation with the Department of Justice.

>> Yes.

>> DOUGLAS KELLNER: Before voting on that, I just want to indicate that I will vote against the motion.

That I believe that the policy issues that we're talking about are not ones of litigation tactics with the Federal Government.

But basic fundamental policy issues on how we're going to carry out the state law and deal with the potential conflicts between state law and the federal law.

And that I think that these kinds of policy issues, even though they do affect litigation, are better discussed in public.

And that's my personal view.

Against the motion.

>> HELENA MOSES DONOHUE: I disagree with my colleague on this, because I think too discuss this fully with our lawyer, we have to go down, explore every avenue back and forth.

And when we do have decision, they will certainly be known to everyone.

We are very transparentment we don't hide things.

But discussions with your attorneys should be confidential and I think we have to keep them at that, at this point.

And I know others disagree.

I see a lady shaking her head down there, but I'm sorry.

We want to do the very best job we can for all the people in the State of New York and for that reason we have to have a complete, open and honest discussion with our attorneys.

And I'm in favor of executive session.

>> DOUGLAS KELLNER: Anyone else want to speak on it?

All right.

So on the motion to go into executive session to discuss the litigation, those in favor aye in

(Chorus of ayes.)

Opposed Kellner.

>> Me.

>> Commissioner, can the public be heard?

I know we can't object to this.

But if we go into executive session, I came down here to speak about the issue of the Department of Justice lawsuit and this does raise the question of who does the AG represent?

The Attorney General represents the people of New York, not just the state board of elections.

And so if you are going to go into executive session, I would like to be heard here.

My feelings about this lawsuit.

>> DOUGLAS KELLNER: Well, we have already -- you know, it's not appropriate for -- to go into long public comments now.

And obviously the best way to communicate with the commissioners is by sending a letter or an e-mail to us.

>> And Ms. Novak I appreciate your e-mail.

I read it and I'm sure the others have it.

>> My experience is that when I send mail or documents here, they are not read.

I'd like to be heard for one minute on this topic because it's a topic that affects the citizens of New York.

It's not just the board of elections.

[Applause] >> DOUGLAS KELLNER: I'll ask the commissioners if they want to give one minute for each person to speak.

Is that acceptable?

>> Yes.

>> How many people are we talking about?

>> DOUGLAS KELLNER: All right.

One minute.

>> Okay.

Thank you.

I appreciate it.

>> You can have this.

>> DOUGLAS KELLNER: You've got one minute, miss Novak.

>> On behalf of the people who you're supposed to represent, we don't want you paving into the -- caving into the Department of Justice pressure and authorizing the purchase of these theft enabling failed machines,

which the Department of Justice memo of law, which I read yesterday, says are good enough for them and that those machines are HAVA compliant.

We the people want our votes counted, not stolen.

The machine that the Department of Justice is telling you to purchase have been found by the Secretary of State of California, and many other independent investigations,

and you have a paper here referencing them all, to be capable of being hacked in less than one minute.

These machines all count our votes on secret software.

That secret vote counting by private companies and by the government, there is nothing more unAmerican than secret vote counting,

and that's what the Department of Justice is telling you that we need to vote on and that this board is considering purchasing for New York.

You can't possibly certify machines in time for 2008 and now the department of justice is telling you that you have to do that by 2008.

So I have one solution to the problem, that the Federal Government has put us in now.

Since there are no machines on the market that can't be rigged, and therefore cannot legally be used or constitutionally be used in a democratic election,

and because the Department of Justice says that if you don't do something, then they're going to impose their will over our state sovereignty, there is one solution that can be put into effect in 2008.

It's HAVA compliant and it's the best solution for the people.

And it will avoid the use of the failed voting.

>> Spit it out.

>> Which should have been recalled.

Because they can't provide a means for honest election.

We can count our votes on paper.

By hand, with our own hand, we can count them with our own eyes, so that the people can see transparently that their votes were counted as cast.

And that is the only solution that can be in effect for 2008 that can get the Department of Justice off our back, that is HAVA compliant and that protects the integrity of the vote.

[Applause]

>> She is right.

Absolutely right.

>> DOUGLAS KELLNER: All right.

Is there anyone else?

This time we're really going to enforce the one minute.

>> I would like to just add that -- kernl kernl give us your name.

>> Toni, the defense alliance.

I'm outraged that with the amount of evidence that has come across the United States, including the Secretary of State, Debra Bone in California, they have done all the testing.

They have gone through this rigorous process of completely negating any type of security in these systems.

They cannot be secured in any way, shape or form.

Software cannot be secured in any way, shape or form and it cannot be audited.

And you have to this board of elections use New York state taxpayer money to go down this path that other states have already gone down is reckless and undemocratic and it is certainly not in the best interests of the voters.

And it totally takes our rights away as citizens to vote and have our votes be counted.

kernl kernl thank you.

>> And also to do it behind closed doors.

>> I'm sue Cohen.

We want to say that the New York state board would be making a big mistake if it allowed uncertified theories to be substituted by -- deactivating the devices and interpreting the -- as ballots.

The state board should not plug uncertified -- into the field untested under the guise that they are BMDs.

These machines are supposed to accommodate voters with disabilities.

Will the accessible interfaces on these devices work appropriately.

How will a voter independently verify their ballot, given their small font size?

If the counting sfungs is deactivated on the DREs, when will you count the ballots.

This will create far more problems before you realize if ever any perceived benefit.

We don't want to spend 42 million dollars for voting machines where People with Disabilities cannot vote independently.

That would be a huge betrayal.

I stay up nights worrying about this. So I would like the board to address that.

Thank you.

>> DOUGLAS KELLNER: Thank you.

Dennis?

>> I want to thank you for allows ARISE to come here.

I want to say yesterday I voted on an auto mark machine.

Albany County has a machine for the disabled.

Anybody can vote on it.

I voted on an auto mark machine and I was thrilled.

I think it covers all the needs of a disabled person.

But when you're done, it takes that preprinted ballot and it just gives you a printed ballot.

The same thing that anyone walking in can do.

When you hand in the preprinted ballot.

They can walk into a privacy booth.

They can give you the same output as the output from an auto mark.

So everybody can have the same output.

I think you had a great idea with Jury duty and college students who can be inspectors.

I don't see any reason why we can't hand count votes at night.

You've got all the people you need to do it.

At the end, if you want to use an optical scanner, you can use that for an unofficial tally.

you can use a hand count for an official tally; one can check the other.

If people don't show up, stay with an optical scanner.

If they show up, the official tally should be the hand count.

The answer is all there.

I don't see why we have to talk about DREs, which I have no trust in.

[Applause]

>> DOUGLAS KELLNER: All right.

Ready for executive session?

>> Yes.

>> DOUGLAS KELLNER: Thank you all for coming.

>> Thank you all for coming.

We appreciate it.

[end of open session]