APPEARANCES

PANEL MEMBERS
Mr. John A. Pérez, Chairperson
Mr. Stephen Kaufman, via telephone
Mr. Michael Bustamante
Mr. Tal Finney, via telephone
Mr. Carl Guardino, via telephone

STAFF
Ms. Jana Lean, Staff Consultant
Ms. Debbie Parsons, Executive Assistant
Mr. Stephen Stuart, Staff Counsel
Mr. Michael Wagaman, Elections Analyst

ALSO PRESENT
Ms. Janice Atkinson, Sonoma County
Ms. Rafaella Cohn
Ms. Terry Hansen, Yuba
Tony Miller, Secretary of State's Office
Mr. Michael J. Smith

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CHAIRPERSON PÉREZ:  I'd like to call the meeting of the Voting Modernization Board to order. We have three members joining us by phone. We have our fifth member anticipated to be joining us in person shortly. We're going to move along even before our fifth member joins us. And I've asked for my colleagues that are on the phone to identify themselves before they speak on items so you'll have the benefit of knowing who it is that's making some of the statements and observations that they'll be making.

That said, Debbie, would you call the roll?

EXECUTIVE ASSISTANT PARSONS:  John Pérez?

CHAIRPERSON PÉREZ:  Here.

EXECUTIVE ASSISTANT PARSONS:  Tal Finney?

BOARD MEMBER FINNEY:  Present.

EXECUTIVE ASSISTANT PARSONS:  Carl Guardino?

BOARD MEMBER GUARDINO:  Here.

EXECUTIVE ASSISTANT PARSONS:  Stephen Kaufman?

VICE CHAIRPERSON KAUFMAN:  Here.

EXECUTIVE ASSISTANT PARSONS:  Michael Bustamante?

CHAIRPERSON PÉREZ:  Anticipated.

And, Carl, the sound quality from your phone is probably the lowest. So if there's something you can do in terms of getting closer to the phone or whatnot, it might be helpful.
BOARD MEMBER GUARDINO: I'd be happy to do so.

Is that better?

CHAIRPERSON PÉREZ: A little better. Thank you.

The first item before us is Item 3, public comment. This period is set aside for public comments limited to two minutes maximum per person for items not otherwise on our agenda. I have one card for public comment period. So if Jerry Berkman would please come forward.

MR. BERKMAN: Hi. I'm Jerry Berkman from Berkeley. I want to comment on -- I was looking at the numbers. The price in these things are all very expensive. There is a development going on called the Open Voting Consortium that is proposing to build a system that is much cheaper. And I would hope in some way the Secretary of State's Office could help them with a little bit of financial aid as they're currently trying to buy -- hire one programer in addition to all their volunteers, which is all of 4,000 a month, which is peanuts compared to 400 million in Voting Modernization funds.

But the idea behind this -- the other reason I'd like open source, you can actually look and see if the program does what it's supposed to do and if there's any hidden agenda inside the computer to undercount one candidate or overcount another, anything like that. It
would be cheaper to maintain, because you can actually get people from the community to maintain it. It's not closed source. And the basic price according to what I've heard is about a third of what it costs to buy the commercial.

One way to support this would be if the Secretary of State's Office could give a grant, say, either to Open Voting Consortium or maybe to CITRS, which is a group of Northern California Universities, University of California campuses, rather, Berkeley, Davis, Merced, so on. And CITRS is organized to support research. And I don't remember what it stands for -- Information Technology and Society. And so this would be right in their ballpark. They could do some research on voting technology, too, so we get through this without spending a fortune and continuing to spend a fortune on maintenance with these systems.

CHAIRPERSON PÉREZ: Thank you, Mr. Berkman. I've got no other cards, unless some have been presented to staff.

Seeing none, the next item on our agenda is adoption of our January 21st meeting minutes. Have the three of you had a chance to review them?

Is there a motion?

BOARD MEMBER FINNEY: I move approval.
CHAIRPERSON PÉREZ: Mr. Finney moves.

VICE CHAIRPERSON KAUFMAN: I'll second, Stephen Kaufman.

CHAIRPERSON PÉREZ: Stephen Kaufman seconds.

Any discussion? Hearing none, all in favor say aye.

(Ayes)

CHAIRPERSON PÉREZ: That's all. Very good.

Next item is Item 5, Staff Report on Related Issues. Item 5A is an Update on the Voting Modernization Fund Pool Investment Board Loan and Bond Sale status.

Jana, would you like to walk us --

STAFF CONSULTANT LEAN: Actually, I would like to ask this agenda item be moved to the next meeting. We're still pending some information from the Treasurer's office. We're unable to give you a staff report at this time.

CHAIRPERSON PÉREZ: Very good. So we'll put that item over.

Next item, review of results of the vendor survey on estimated costs of the DREs with AVVPAT.

STAFF CONSULTANT LEAN: In your packet, you'll see that we have results from the survey. There are a couple vendors that did not actually supply their information, but what we do have is the Diebold, ES&S,
1 Hart, and Sequoia.
2 I do have something that was just handed to me
3 from our Voting Systems person that has some kind of notes
4 here, so I'm going to let him refer to the packet. This
5 is Michael Wagaman.
6 ELECTIONS ANALYST WAGAMAN: It's just one
7 correction under Sequoia on the second box. That 2800 and
8 3500 is the basis for the DREs without the VVPAT. The
9 VVPAT would be that 800, 1100 on top of it. That should
10 be 3600 to 4600.
11 CHAIRPERSON PÉREZ: Okay. Anything else you want
12 to add, Jana?
13 STAFF CONSULTANT LEAN: The only thing you asked
14 at the last meeting was to find out what the Nevada State
15 costs were on the DREs, the Sequoia AVC Edge. And
16 according to information that Michael Wagaman gathered, it
17 was $2,860 for the DRE with a $500 AVVPAT.
18 CHAIRPERSON PÉREZ: Can you repeat that?
19 STAFF CONSULTANT LEAN: $2,860 per DRE and a $500
20 AVVPAT.
21 VICE CHAIRPERSON KAUFMAN: Stephen Kaufman.
22 Sorry. That was for whom or for what?
23 CHAIRPERSON PÉREZ: That was for the state of
24 Nevada. As you remember, at the last meeting we had a
25 discussion about the -- what was going on in Nevada, and
wanted to be able to make sure we were informed based on the experience there as well. And so what we see is the numbers in Nevada coming in somewhere close to the ballpark of the figures that we're seeing based on the survey from the vendors here in California.

Michael.

ELECTIONS ANALYST WAGAMAN: That's correct.

Sequoia is reporting it's a slightly lower number for Nevada. Sequoia reported to me they had a loss on that. You'll see a slightly higher number they're going to report on.

CHAIRPERSON PÉREZ: They can pick it up on volume here.

What I'd like to do is swap the next two items on our agenda. Item E on our agenda is a discussion relevant to what we've just been discussing. I'd like to move it up, and that's the discussion regarding the $3,000 cap for state contribution for DRE voting machines. Unless any of the three of you object, I'd like to move into that now.

VICE CHAIRPERSON KAUFMAN: This is Stephen Kaufman. I don't have any objection. But I did have another question about the chart that we just looked at, the survey.

CHAIRPERSON PÉREZ: Go head, Stephen.

VICE CHAIRPERSON KAUFMAN: And that was I noticed
that, I guess, ES&S is the only manufacturer at this point that has a non-DRE machine that meets the HAVA accessibility requirements. What is the current -- do we know what the current average cost is for the optical scan machine that doesn't have these accessibility features?

ELECTIONS ANALYST WAGAMAN: I'm not sure of that number. You'd have to make a differentiation if you're talking about precinct count or central optical count system.

CHAIRPERSON PÉREZ: The actions we've taken up to this point with respect to cost containment have only been around DREs. We have not entered into any discussions about creating caps for state contribution on non-DRE based systems.

VICE CHAIRPERSON KAUFMAN: Okay.

CHAIRPERSON PÉREZ: So with that, Jana, do you want to walk us through a staff recommendation with respect to the $3,000 cap?

STAFF CONSULTANT LEAN: Sure. This was brought up at the last meeting. I just wanted to go over the current VMB policy places a $3,000 cap per machine on the amount the state would contribute to purchasing a DRE. But now that we know state law now requires that all DRE have this accessible voter verified paper audit trail, the component will increase the overall cost of DREs.
But according to what we found out in the survey, that while the new printer requirement will increase the cost, the vendors' estimates for the new AVVPAT requirement still seems to be within the $4,000 range which you originally established.

So staff would recommend looking at the options presented to you to either maintain the cap, increase the cap, or eliminate the cap. We would recommend to maintain the $3,000 cap.

CHAIRPERSON PÉREZ: Okay. What I want to do is walk us through this one by one, get each of your feedback on the staff recommendation.

Stephen, would you like to go first?

VICE CHAIRPERSON KAUFMAN: Sure. Yeah. It struck me in looking at the survey that the costs at least for new systems were still essentially within the range contemplated previously. And I guess it seems to me that to the extent there is an issue at all, it's with respect to those jurisdictions that already purchased machines and now have to retrofit their systems and those that are already maxed out on their allocation would, I guess, be the only ones that have an issue in that respect, although unless I'm misreading the situation, it seems there's substantial additional moneys being provided to those counties under the HAVA Section 301 formula allocation.
that I guess was reached earlier this month.
So on that basis, it seemed to me that, you know, with the exception of a few counties this might negatively impact because they already purchased the machinery, that the number still justify the caps that were in place originally.

CHAIRPERSON PÉREZ: Very good. Thank you, Stephen.

Tal.

BOARD MEMBER FINNEY: I feel the same way Stephen does. I'm just curious what we do with the counties that have already purchased the equipment.

CHAIRPERSON PÉREZ: Why don't we come back to that in a minute.

Carl.

BOARD MEMBER GUARDINO: That was going to be my question as well.

CHAIRPERSON PÉREZ: Okay. Jana, would you like to comment on the situation for counties who have purchased DREs or need to retrofit?

STAFF CONSULTANT LEAN: Well, I think our next agenda item regarding the HAVA 301 Task Force, going into that, it does look like there will be some additional money for the counties who have already converted to help retrofit their machines.
CHAIRPERSON PÉREZ: And there's nothing --

Mr. Bustamante is joining us. There is nothing that -- is there anything that precludes those counties from using VMB funds for retrofitting? I don't see anything that does.

STAFF CONSULTANT LEAN: Not if they have any left over, no.

CHAIRPERSON PÉREZ: The big issue is if they expended their VMB funds and need to retrofit, and that really gets us into a 301 discussion or a discussion about future funding rounds. But changing the cap wouldn't solve their problem either, because they've utilized their allocation.

STAFF CONSULTANT LEAN: I would agree.

CHAIRPERSON PÉREZ: Any response from any of you three gentlemen?

BOARD MEMBER FINNEY: I'd like to say -- Tal Finney.

If that is the case and they are able to use VMB money, we have to figure out -- I hate to say it, but another cap for that, depending on what we have done. I mean, we wouldn't want to be, you know, overly excessive expenditures on retrofitting just because they're out of VMB moneys.

CHAIRPERSON PÉREZ: And, quite frankly, I think
there's considerable pressure on them not to want to do that, and there is considerable pressure on the vendors, given the published numbers they've placed out there for the AVVPAT components that they've tagged on in this survey.

Jana.

BOARD MEMBER FINNEY: I think our staff can help with that, too. But still going forward, depending on what the costs of the retrofit are going to be, there should be some type of standard we should try to set.

STAFF CONSULTANT LEAN: I would like to indicate these are estimates. These aren't firm numbers. These are just estimates to our survey. We don't want to say this is the pricing sheet on how much they're going to cost.

CHAIRPERSON PÉREZ: Right. Mr. Bustamante, where we are is we're in discussions about the previously established $3,000 cap on the State's portion of the contribution for acquisition of DREs. And we had a survey of the vendors and looked at whether or not we had to adjust that cap, given projections and estimates of the cost of DREs, but there'd also be AVVPAT. And what we found and was our general consensus was that our previous cap was close to adequately covering the projected costs. The only issue was for those counties that may need to
retrofit systems they purchased and whatever cost containment proposals we may want to take consistent with Mr. Finney's comments, so by way of bringing us up to speed.

Well, let me ask a procedural question. If we want to keep the cap, there really is no action necessary. So unless somebody wants to propose -- let me ask, is there a proposal from any of you to adjust the cap in any way?

BOARD MEMBER FINNEY: Tal, again.

I just want to point out I don't want counties that have acted already, even within the context of our task, in response to, you know, market concerns and regulatory compliance issues, to be prejudiced in their ability to move forward with their programs. So I support the cap in place as we move forward. But then I do have some concern we try to find some way to help accommodate counties that have been forced to retrofit.

CHAIRPERSON PÉREZ: Here's what I'd like to do, Tal, given the sentiment you're expressing. What I'd like to do is move forward with us continuing the cap as it currently stands and then flag for discussion under Item 7, Other Business, this issue with respect to counties that need to retrofit. Putting it there, it's informed by the discussion we're about to have regarding 301.
Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: Mr. Chair, didn't we have a discussion at some point where we talked about after the deadline had passed and those counties that didn't submit applications that there would be a pool of funds available that we could use to help offset some of the costs to the counties with regard to the paper --

CHAIRPERSON PÉREZ: Yes. And that comes into play with Item VI, 1, on our agenda.

BOARD MEMBER FINNEY: Do we need to take public testimony on this?

CHAIRPERSON PÉREZ: There are no cards that have been submitted. So without cards, there's no expressed interest in rehashing this, I think, from the folks in the audience.

BOARD MEMBER FINNEY: I'll move the Chair's proposal.

CHAIRPERSON PÉREZ: My proposal was just to move forward with the agenda. Our silence indicates continued support for the $3,000 cap. And we move on to Item VI. Without objection, Item VI, project documentation submittal deadlines. The first is considering a possible change to the July 1st, 2005, deadline for counties to submit their project documentation plans. For those of you who were with us -- well, actually, I guess at the
last meeting, Mr. Finney --

STAFF CONSULTANT LEAN: Chairperson Pérez, I'm sorry to interrupt you, but we do have the 301 Task Force. Do you want to move --

CHAIRPERSON PÉREZ: I apologize. Thank you very much. I got ahead of myself.

We have the 301 Task Force report to receive first. So please go ahead, Jana.

STAFF CONSULTANT LEAN: The Board did indicate that they were interested in some of the activities going on with the HAVA Section 301 Task Force that was formed by the Secretary of State's Office. This Task Force was formed to assist with implementation of the aspects of HAVA requirements. And one of their initial undertakings was to propose funding principles to achieve compliance with Section 301 of HAVA.

At the February 11th, 2005, meeting, the HAVA Section 301 Task Force decided to use the Proposition 41 allocation formula as a basis for funding and recommended that funding allocation be for 195 million. This was just done. I was told by Tony Miller that this proposal was moved forward to the Department of Finance in a finance letter, and it's pending approval.

CHAIRPERSON PÉREZ: Very good.

STAFF CONSULTANT LEAN: With these discussions,
the retrofitting money, additional money for counties to
purchase the voting systems, that's what this 195 million
was proposed to be.

CHAIRPERSON PÉREZ: And just to make it
completely clear, both the formula and the allocation
directly mirror the work of this Board; am I correct?

STAFF CONSULTANT LEAN: Directly. They're even
looking at the basic procedural model, the application
process, requiring a contract. So I think that would be
very much a compliment to this Board that they're looking
to somebody that's already been established, is out there,
is working. And I thought this really would be a good
opportunity to let you guys know that that is going on.
And also this does tie very much directly with what you
are making decisions on here.

CHAIRPERSON PÉREZ: All right. Mr. Finney, I
want to make sure we had this discussion, because you'll
see then for counties that did acquire new technology and
spent down their Prop. 41 moneys, they have equal amounts
of money now available to them to make other changes,
including the retrofitting of DREs that they may have
acquired.

BOARD MEMBER FINNEY: I appreciate that.

CHAIRPERSON PÉREZ: And we'll be happy to hear
that, in fact, it was a compliment to us for them having
plagiarized our work.

BOARD MEMBER FINNEY: It's all in the service of the people.

CHAIRPERSON PÉREZ: Okay. Anything else on this item?

Item VI. Now we'll go back to Item IV, A. And the discussion with respect to the January 1st -- sorry. Scratch that. The July 1st, 2005, deadline.

At our last meeting -- I know you've all reviewed the minutes, and I know some of you even read the 101-page transcript. But at our last meeting, Mr. Kaufman, Mr. Finney, and myself were here for an exhaustive conversation with many of the counties to discuss the issue of deadlines. Prior to concluding that discussion, we lost our quorum. Our commitment was to take this item up at this meeting, but have it be fully informed by the input that the counties gave at the last meeting. So that said, I'd like to move us into the staff recommendation or staff report with respect to Item IV, A.

STAFF CONSULTANT LEAN: Since we have discussed this item more than once and we had the big discussion of it at the last meeting, it's a very brief report. I just put out some other additional options for you.

As it stands, the July 1, 2005, deadline for counties to receive approval of the VMB on a project...
application is still the deadline. You have three options that we're presenting to you. Option Number 1 would be to move the project documentation deadline to January 1, 2006. I can go into that further, but -- and this would also --

CHAIRPERSON PÉREZ: Shortened is fine.

STAFF CONSULTANT LEAN: And Option 2 would be to move the deadline to March 1st, 2006. And Option 3 would be to have the deadline as an open-ended requirement.

There wouldn't necessarily be a deadline.

CHAIRPERSON PÉREZ: Okay. I've got two cards on this issue. Unless anybody has specific questions they'd like to raise first, I'd like to move to the cards.

Okay. The first card I have is from Janice Atkinson from Somona County. Ms. Atkinson also submitted a letter to us that each of you should have in your packets.

MS. ATKINSON: Thank you. Janice Atkinson, County of Somona. And I'm just here today to reiterate what's in my letter, that I'm hoping that you will go for Option 3 of the three options laid out to you by your staff.

Somona County currently uses the Mark-A-Vote voting system. We have every intention of enhancing our system with a supplemental unit that will be accessible to
the disabled by the primary 2006.

With the ever-changing landscape before us, I will tell you in the last two weeks the amount of Section 301 money the counties have been looking at has changed at least three times. It's been a little bit hard to get our hands around this.

But what I'd like to recommend is that those counties who are looking at adding a supplemental system to meet the requirements of HAVA do so through the HAVA funding process and not through the voting modernization process. I would like to have my funds -- my county's funds held in reserve for my county to purchase a new voting system, at such time as there is a voting system that will meet the needs of our county. Currently, none of the voting systems that certainly are certified in this state and that even are coming before the VSP for certification will meet the needs for Somona County.

As you know and as you've seen over the last couple of years, things change very rapidly in the elections field. I believe there will be new technology on the horizon. And hopefully within the foreseeable future, those of us who have been holding out and waiting will be able to purchase a new system.

I also wanted to point out that, in doing some research, I found that Somona County was one of only 15
counties in the state where Prop. 41 actually was passed by the voters. I would hate to see our funds distributed the other counties who may have already spent their allocated portion, when our voters supported this modernization fund.

CHAIRPERSON PÉREZ: As we were coming up with a formula for allocation of funds, we looked at lots of things, including something that you made reference to in terms of pro rata distribution. We struggled with the idea of population based, voter registration based. One of us on the phone even suggested we may distribute them based on counties who approved the bond measure. But that's not the ultimate formula we came up with.

I want to see if anybody on the phone has a comment first, and then we'll -- any questions for Ms. Atkinson or any comments before we move on to our next card?

I have one question then. I struggle with the idea of open ended, but I'm drawn to it because I want to be as fair as possible to the counties. And I want to be responsive to the fact that it is an incredibly changing world. And, quite frankly, we all thought we would be done a year-and-a-half ago in terms of the work of this Board. But I struggle with the idea of completely open ended.
So your suggestion is completely open ended. Are you comfortable with any sort of a time line for us to recapture the money? And the reason I ask is while Sonoma may not be in this situation, there may be other counties that may decide not to move forward. And what do we do with that money that sits there, if there's not an intention to use it? And should we be then acting to move that money to other counties that have continued financial need to address the issues within their counties?

MS. ATKINSON: Well, I suppose that, yes, I would be open to some date in the future. You know, we could set some date in the future.

Where this is so difficult and it's, you know -- we're all just guessing. If we, as counties, had had before us an array of voting systems from which to choose, it may not have been such a difficult decision. But we've been sitting here now for two years with nothing to buy, no one coming forward with anything new that's gotten approved by the state. We seem to be decertifying systems faster than we're certifying them in the state.

And so, you know, my crystal ball the county gave me when I started is a little hazy. And I can't pull a date out of the air when the vendors will have a new system for us to purchase. I just know -- I will tell you that at times I have felt like we are hurrying through
this process so that the Board can disband, you know, because you guys have been sitting up here, and you want to allocate the funds so everybody can go home again.

I want to be sure that when I buy a voting system for the voters of Somona County that it is, in fact, a system that meets the needs of the voters of the county and that I'm not just buying something, rushing into buying something because we had an artificial deadline imposed.

CHAIRPERSON PÉREZ: I think I speak for the Board when I say we don't want to rush you. We wanted to create an aggressive time line that allowed counties that wanted to move forward quickly the opportunity to move forward quickly, and that we've adjusted this time line to be responsive to the changing dynamics impacting counties.

And I don't think there's anybody other than another County, you know, Registrar who is as frustrated as you are -- as we are by the fact that you had options to buy them, but you're probably better served not having purchased them, because now you get to look at options that may be ongoing, as opposed to those that were shortly before you and then decertified. So we absolutely, I think, share your frustration and your concern. And we don't want to rush you into a decision that you don't think would be best for the voters of your county.
VICE CHAIRPERSON KAUFMAN: Mr. Chairman, can I ask a follow-up question?

CHAIRPERSON PÉREZ: Go head, Mr. Kaufman.

VICE CHAIRPERSON KAUFMAN: I was just wondering from Ms. Atkinson whether you believe that the March 1, Option 2 that's been presented here by the staff, whether March 1 -- apart from the fact it provides you with two additional months time, does that provide you with any benefit beyond setting the date of January 1, 2006?

And what I'm really trying to get at, is there any concern that having the deadline for HAVA, meeting the HAVA requirement, and having the deadline for submitting or getting approval from this Board, does the parallel date at all present a problem that would be solved by extending it two months?

MS. ATKINSON: I don't believe that it does, in that I -- hopefully providing that the Section 301 HAVA funding is approved, I intend to comply with HAVA using the Section 301 funds as I believe they were originally intended. And I would like then to have the voting modernization funds held from my county to be used for future voter modernization as I feel they were intended.

CHAIRPERSON PÉREZ: May I ask another question?

One of the things we wrestled with was some counties not being responsive to some of our initial
overtures in trying to come up with our allocation in the first place. And there were several counties who are very slow to comment. It took multiple written and telephonic communications from the staff that works for this Board and the other staff in the election division to get that responsiveness.

One of the items that I see in your letter in the basically last substantive paragraph is your willingness to provide the VMB with ongoing reports if we have an open-ended process. My question is this: If we were to move forward with the completely open-ended time line and establish a reporting process for interim reports from counties to determine whether there's an ongoing interest, what do you think the trigger should be for us to find a county being nonresponsive either technically or substantively that would allow for us then to recapture that money and allocate it to counties that have ongoing need?

MS. ATKINSON: Well, I certainly would think that would be up to the Board itself to establish something.

But if, in fact, you establish a procedure by which the counties need to report on an annual basis or a semi-annual basis as to what their plans are, and counties fail to meet that, you know, I do believe that you could set, you know, a date by which your funds will then be
returned to the general pool and possibly reallocated.

CHAIRPERSON PÉREZ: Okay. Thank you.

Anything else for Ms. Atkinson?

If not, thank you very much. I appreciate both

your written and your comments in person.

MS. ATKINSON: Thank you.

CHAIRPERSON PÉREZ: The next card we have is for

Terry Hansen from Yuba.

MS. HANSEN: Basically, I would like to concur

with what Janice just said from Somona County.

But I would also like to address one of the

comments you made, and I'm particularly sensitive to this.

I'm from Yuba County, and I believe Yuba County was one of

the non-responsive counties. This was -- I just took

office in Yuba County in 2000, two years ago. And so

since then, we have become very responsive, but it was a

huge learning curve to get into this environment, to

successfully navigate this environment.

Originally, I felt like someone had directed me

you are now to go to the moon, Terry, but you don't have a

rocket ship, but you get there. And it was like, how do

you do this? And so it has been a huge learning curve,

and I'm sure I'm not the only County Registrar of Voters

that was put into this position and is now trying to

comply fully, with every intention of complying fully.
I, too, would support Option Number 3 with some definite guidelines in place that compliance should move forward, documentation should move forward with that compliance, or you would definitely experience a loss of your funding.

Thank you.

CHAIRPERSON PÉREZ: Thank you. Before you leave, let me just see if there's any questions from any of the Board members.

Any questions for Ms. Hansen from Yuba?

Thank you.

Our next card is Mr. Michael J. Smith.

MR. SMITH: Yes. Michael J. Smith from Santa Cruz County.

I'm glad I was third, because what Ms. Atkinson said I would not disagree with in any part, except I understand the dilemma you have with the open-ended system. And so I would recommend a June 1st of 2006, which I think would push it up even a little bit more than the March, but wouldn't make you feel as though there's a never to come date for this to happen.

I fully support the idea that the funds should come from the HAVA funds rather than -- and keep the others in reserve. I work closely with our Registrar in Santa Cruz County and see the dilemma they have. And I
fully supported them holding off spending funds when what existed turned out to be not what most people, certainly, that we've spoken to in Santa Cruz County wanted, first of all, and with the problems existing with Diebold and various other companies.

So I fully supported Ms. Atkinson's recommendations without this one date of June 1st being implemented.

CHAIRPERSON PÉREZ: Thank you.

Any questions for Mr. Smith?

Okay. That is the extent of our cards on this item.

Mr. Bustamante, anything on this before I move to the phone?

BOARD MEMBER BUSTAMANTE: Yes. I have a couple questions of staff. How many counties of already submitted applications?

STAFF CONSULTANT LEAN: Twenty-two.

BOARD MEMBER BUSTAMANTE: How many counties do we have left?

STAFF CONSULTANT LEAN: Thirty-six.

BOARD MEMBER BUSTAMANTE: Of the 36, how many do we believe are actually going to participate in the process?

STAFF CONSULTANT LEAN: That's actually one of
the reasons why we've suggested an interim status report
so we can get a word back. Because of the decertification
of the DREs and all of the current atmosphere the voting
systems are in right now, it's really hard to tell where
counties are, because I'm not sure they know where they
want to go. We would have to definitely survey them again
and find out exactly where they want to go and if they're
going to use this money.

I would anticipate, given that there is some
money now with the 301, that they would -- that still
wouldn't necessarily cover their entire costs, so I would
anticipate they would come forward for the Voting
Modernization Board money.

BOARD MEMBER BUSTAMANTE: Because my recollection
when we started this, there was at least a dozen counties
that weren't interested, something along those lines.

CHAIRPERSON PÉREZ: I think there were probably a
good number of counties that weren't responding. Some may
not have been interested and some of them may have been in
the situation Yuba was in with a substantial transition in
trying to fully get up to speed and --

BOARD MEMBER BUSTAMANTE: Just for some reason, I
just have a recollection of counties -- a number of
counties just saying --

CHAIRPERSON PÉREZ: And there were.
STAFF CONSULTANT LEAN: At the beginning of process, HAVA hadn't been passed yet, so it hadn't been really analyzed and implemented. And so I'm not necessarily sure that those counties were aware of their responsibility under HAVA of having one accessible voting machine. I think we discussed it, but I don't know -- especially some of the smaller counties who don't have the opportunity to come to these meetings, to go to legislative meeting of the CACEO. So they may not have been fully briefed on the requirements yet. So I think that might have been at the beginning in an onset of VMB.

BOARD MEMBER BUSTAMANTE: It's true HAVA hadn't passed, but I think staff had done a yeoman's effort in making sure on multiple times, at least a half a dozen --

STAFF CONSULTANT LEAN: We did.

STAFF CONSULTANT LEAN: Michael.

ELECTIONS ANALYST WAGAMAN: How many systems are certified?

STAFF CONSULTANT LEAN: Michael.

CHAIRPERSON PÉREZ: How many systems have been certified.

BOARD MEMBER BUSTAMANTE: How many systems are currently certified?

STAFF CONSULTANT LEAN: What type of systems?
ELECTIONS ANALYST WAGAMAN: How many systems are certified or are certified that fully meet every --

BOARD MEMBER BUSTAMANTE: Systems that are certified that would meet the HAVA requirements.

ELECTIONS ANALYST WAGAMAN: There is one certified that would meet the HAVA accessibility requirement. There are other systems that meet other portions of it that would have to use in conjunction with at least one other voting system component.

CHAIRPERSON PÉREZ: Forgive Michael and forgive me, because this isn't what we did on a day-to-day basis. And we found that depending on how you ask the question, it may significantly impact the answer you get. I don't remember how we parsed the question before, but last I understood, there wasn't a single system in place that was certified both federally and state that would meet the HAVA requirements. What's the distinction between my understanding and the one that you've identified?

ELECTIONS ANALYST WAGAMAN: The distinction is our discussion last time in which I annoyed you by pointing out we had approved the Sequoia VeriVote system, even though it had a problem. It was conditional. That was the primary issue that I think was of your primary -- of your most concern.

BOARD MEMBER BUSTAMANTE: The answer is none.
CHAIRPERSON PÉREZ: Has that condition been met?

BOARD MEMBER BUSTAMANTE: Strictly, the answer is none. But not strictly, the answer is probably one. Is that a better way to put it?

ELECTIONS ANALYST WAGAMAN: I like my Panel better.

The system is approved. There are conditions attached to that certification. The only condition that -- the only two significant conditions on there that are beyond just kind of boilerplate-type language are, one, that they have to address a procedural issue on how they're going to deal with the system storing the votes sequentially, so the paper records are stored on a reel-to-reel system, and how they're going to deal with voter privacy concerns with that issue. The counties are submitting their plan for how they would suggest procedurally dealing with that by tomorrow. So that process is moving forward right now.

The second issue is the primary issue, that the system can't handle the primary, at least the qualified version of it. So they're going through the federal qualification process on that right now. They already developed the software for it. They've used it before. It just wasn't certified previously. So now they're going through and getting that approved.
CHAIRPERSON PÉREZ: Of our 58 counties, how many of them have primary elections?

ELECTIONS ANALYST WAGAMAN: Before June of 2006?

CHAIRPERSON PÉREZ: How many of them have primary elections?

ELECTIONS ANALYST WAGAMAN: All 58 will have a primary election. That's correct.

CHAIRPERSON PÉREZ: I don't mean to be flip, except that I feel for San Diego. San Diego had a conditionally-approved system. They moved forward. I was looking for a more colorful term.

The frustration that we have -- and it's not directed at you by any means -- is that this is reality for counties. And this is reality for voters. And while the voters expressed an absolute desire in modernizing technology, there was an expectation that that modernization would be in the best interest of the voters both in terms of the integrity of the process and in terms of voters' confidence in the integrity of the process.

And moving the ball as it's been moved has been an incredibly frustrating process for elections officials, and it's done nothing to increase voter confidence in the election system.

And so while I agree with your assessment that there's one conditionally-approved system, I, for one,
still count it as zero, because until conditions are removed, until there's a system in place that people can use and hopefully multiple systems in place people can use so there's true choice, then I think we're putting counties in a tremendously difficult position. And the competing values of our state system versus the federal regs make it so it's going to be very difficult for voters to have the experience they want to have and for us to have the kind of seamless transition we're hoping for.

ELECTIONS ANALYST WAGAMAN: Perhaps more informative to you is knowing where we are in the future certification process so you know what we have scheduled in the future, rather than what's been done already.

CHAIRPERSON PÉREZ: That would be great.

ELECTIONS ANALYST WAGAMAN: Currently, we have scheduled as far as, again, systems that meet the accessibility requirement, which is really the big trigger that people are being held up on, we have the AutoMark system which is ES&S' non-DRE system scheduled to be tested in early March. We have a Diebold --

CHAIRPERSON PÉREZ: Hang on one second, because I'm trying to --

STAFF CONSULTANT LEAN: That was actually in your -- at the last meeting, this information was in your packet.
CHAIRPERSON PÉREZ: Right. Let's go through it again, though.

ELECTIONS ANALYST WAGAMAN: There have been some changes, that's why I wanted to update you.

The Diebold TSX with the paper trail in place is scheduled to be tested in the first week in last -- the week in March. So that one is upcoming.

There's a third system from a new vendor called Populex. That application is expected to be received either this week or next week.

CHAIRPERSON PÉREZ: Is that a DRE?

ELECTIONS ANALYST WAGAMAN: That will be a DRE with a paper trail. So that -- actually, that is not a DRE, in the sense it does not store an electronic record of the vote. What it does is prints a ballot on demand. You vote on it like a DRE, but it doesn't store an electronic record. It stores your ballot.

CHAIRPERSON PÉREZ: Isn't there -- you were mentioning about Sequoia.

ELECTIONS ANALYST WAGAMAN: Sequoia is currently going through their federal changes that they're going through and qualifying right now. We don't have an application before us.

CHAIRPERSON PÉREZ: Populex is more like -- I can't remember the brand of the one I looked at. But it
was basically a touch screen ballot marker.

ELECTIONS ANALYST WAGAMAN: Correct. It would be closest related to the AutoMark, which is what you just described from ES&S, except the AutoMark takes a print ballot and marks it. The Populex is a ballot memory. It will print the ballot. It is a blank piece of paper with a water mark, and it prints the wallet and the mark at the same time.

BOARD MEMBER BUSTAMANTE: So after -- I mean, you've got two machines, one for the first week of March, one for the last week of March. After they go through this testing period, let's just say for argument's sake everything is perfect, everything seems to meet all your requirements, how long from there does the process take for them to be eligible for counties to actually be able to consider purchasing them?

ELECTIONS ANALYST WAGAMAN: We have VSP hearings scheduled, again, the morning the same days of yours. Basically, the time line would be we complete testing. We'll usually schedule the hearing before testing is completed. It will take us about a week to complete a report. It will take another week where we have to have the notice of the report so we can allow for public comment. Minimum, we have to complete testing probably at least two weeks in advance of a hearing. So things being
tested in March will usually come up -- whatever month
they're tested in, it's usually the next month that they
will go before the hearing. So I would imagine at least
one system will come forward for that April VSP. I
imagine two to three systems will be ready for the May
VSP.

CHAIRPERSON PÉREZ: So it's testing in month one,
then in month two it comes before you, then in month three
we decertify? I'm sorry. I have to have a little fun
today.

BOARD MEMBER BUSTAMANTE: So on the federal side
after you've gone through the testing and the hearing and
say the approval, at that point then there's a federal
process involved?

ELECTIONS ANALYST WAGAMAN: The federal process
starts before the state process. Generally, the policy
has been, due to the issues that came up previously, that
we will not start the state testing unless the federal
testing is at least completed. They wouldn't necessarily
have the qualification number, but the testing is
completed. Two, we may have the hearing, but actual
certification would not be issued until that qualification
number is attached to the voting system.

BOARD MEMBER BUSTAMANTE: Basically, what you're
saying, there could be three, maybe four systems available
in June.

ELECTIONS ANALYST WAGAMAN: My guess is by June you would have at least three to four systems, if not more. There are other vendors out there that I did not mention that have not said they're coming forward at this point. Avante has said they're going to come forward at some point. Accupoll said they're going to come forward at some point. Those are additional vendors. I don't have specific dates for testing.

BOARD MEMBER BUSTAMANTE: Did you say Sequoia hadn't submitted an application?

ELECTIONS ANALYST WAGAMAN: They submitted an application for the version that this Panel has issues with. But for the version that would include the changes to deal with the conditions on the certification, they have not submitted that. They're in the federal process right now.

BOARD MEMBER BUSTAMANTE: Some people, not all people.

CHAIRPERSON PÉREZ: Let's do this, since you've been so patient to hear Mr. Bustamante and myself. Mr. Kaufman, anything on this?

BOARD MEMBER BUSTAMANTE: I had one more question.

What happens if the counties don't meet the
January 1, 2006, HAVA requirements? Do we know?

ELECTIONS ANALYST WAGAMAN: Not being a lawyer, I would not want to speculate, other than --

BOARD MEMBER BUSTAMANTE: Is there any indication from the folks on the federal side what that could be?

STAFF COUNSEL STUART: Not that I've heard of.

BOARD MEMBER BUSTAMANTE: Have we asked the question?

STAFF COUNSEL STUART: I know with respect to the statewide database they've said they're going to enforce that vigorously.

BOARD MEMBER BUSTAMANTE: That's not my concern.

STAFF COUNSEL STUART: Other HAVA requirements I'm not aware of.

BOARD MEMBER BUSTAMANTE: Have we asked the question?

STAFF COUNSEL STUART: That, I would have to ask Tony Miller about.

BOARD MEMBER BUSTAMANTE: Can we ask Tony Miller?

CHAIRPERSON PÉREZ: Can we do that? Is he available in the building? Michael, I do not mean to pick on you. I just want to make sure we are on the same page.

BOARD MEMBER BUSTAMANTE: I think -- I mean, if you're going to play a hand of poker, you have to play with the full deck.
And counties have no idea. As it is, the ground has been shifting under their feet now for well over a year. And there's this HAVA thing that's out there, and it's either nothing or, you know, an ominous cloud that's going to strip the counties in the state away from lots of money. If we don't know what the answer is, it's going to be difficult to make decisions. It's going to be difficult for counties to make decisions, too. If they know they're going to lose $300 million on January the 1st, I'd be willing to bet Somona and other counties would be willing to take anything, you know. I hate to put names associated with counties, but counties may consider taking something as opposed to nothing if they knew funding would be lost forever.

CHAIRPERSON PÉREZ: It's especially difficult for counties that are dealing with a grandfathered system and --

ELECTIONS ANALYST WAGAMAN: Let me see if I can answer part of that, and if there are any other questions for me, I can answer them. And then I will go and let Mr. Miller know his presence has been requested.

Specific to the 195, that was part of the -- what just went over to DOF. They did not, I believe, recommend a deadline for that money. So --

BOARD MEMBER BUSTAMANTE: Who they?
CHAIRPERSON PÉREZ: The Secretary.

ELECTIONS ANALYST WAGAMAN: The 301 Task Force did not recommend it and that wasn't part of what I believe the Secretary sent in his letter over to DOF. That money does not disappear --

BOARD MEMBER BUSTAMANTE: That's not the question I'm asking. It's irrelevant what the State wants. Those are federal funds.

And the question is what will the federal government do to those funds that have been allocated to the states to be allocated to the counties. That's what I want to know. It's irrelevant what the State wants because --

CHAIRPERSON PÉREZ: And it's not just a question about the funds that the feds have already allocated to the states. But if there's an indication for future funding rounds from the feds to the state, it's impacted by our use or non-use of those funds over a certain time line and what other kind of compliance issues.

BOARD MEMBER BUSTAMANTE: Sorry. I just don't think we can be cavalier with hundreds of millions of dollars that we're not even using. It's money that's going to the counties. They're the ones who are losing sleep.

ELECTIONS ANALYST WAGAMAN: That's fine. And
that's a question for Mr. Miller, who I will go get. If there are any other certification questions, I'd be happy to answer those.

CHAIRPERSON PÉREZ: Let me do this before you leave then.

Stephen, Tal, Carl, any certification questions before Michael goes up to get Tony Miller?

If would you bring Tony.

And then any of you -- let's do this. Let me rephrase that. Let's do it in the same order.

Stephen, would you like to comment or raise issue with respect to moving the July 1st, 2005, deadline?

VICE CHAIRPERSON KAUFMAN: Yeah. I'll make a comment. And I guess I think I've been pretty consistent on this for the last few months. I think under the circumstances a change is warranted from the July 1, 2005, date. I don't think there's any question about that.

And I echo Mr. Bustamante's concerns about the fact that ultimately it really does seem like in a way we're shooting in the dark right along with the counties in trying to figure out what the situation is going to be a year from now.

Having said that, you know, we are being driven by the fact and I think the whole issue is being driven by the fact right now that under HAVA counties are required
to be in compliance by January 1, 2006. And since I'm not inclined to just keep this an open-ended process to eternity, I do think we should have a deadline in place. And it seems to me that mirroring the federal requirement for the federal deadline is a good, if not a perfect, system. It at least has some relationship to what the realities are out there.

And if we decide in November or December, things change on the federal level as well, that we need to adjust the process, we've already done it before. I mean, we went through this six months ago when we changed the deadline to July or whatever it was, eight months ago.

So, you know, that's where I'm inclined to go at this point. It's not perfect, and I don't think we're going to come up with a perfect answer on this. But I have great respect and concern for the counties. And please don't take my absence there today as anything other than having a really awful cold and not being able to get on a plane this morning. I think this issue is really important, and we need to provide the counties with the support they deserve. But it just seems to me right now that kind of middle ground position is probably the safest place to be.

CHAIRPERSON PÉREZ: Thank you.

Mr. Guardino.
BOARD MEMBER GUARDINO: I concur. I think that's well said, Stephen. I would concur.

CHAIRPERSON PÉREZ: Mr. Finney.

BOARD MEMBER FINNEY: I concur as well.

CHAIRPERSON PÉREZ: Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: Yeah. I think Stephen kind of summed it all up. I was one of those that was very reluctant to change the date at all, and kind of reluctantly went along with it to July. I mean, I just cannot see the reason in the open-ended process. And I think that as much as I would prefer to keep it to July, I think we have to recognize the new realities here.

Before we conclude this -- what happened to Tony?

CHAIRPERSON PÉREZ: Another staff member is getting Mr. Miller.

BOARD MEMBER BUSTAMANTE: Because I think -- well, I mean, I think I already know the answer. I'm sure he's not going to have an answer.

CHAIRPERSON PÉREZ: Okay. Here's what I'm hearing. I mean, all four of you are coming down on the side of January 1st, 2005. I don't see the value in March versus January.

Jana, can you tell us what informed -- March is the next date instead of the next January or the next July, or how did you come on March as our third option?
STAFF CONSULTANT LEAN: Well, the counties need at least three months in order to get the equipment, test the equipment. That's why I was thinking of a March deadline and moving it out from January. As of January 1, they wouldn't necessarily have to have it. Also because they don't have to have the equipment in place until June, I was thinking that would back it up a few months and allow them to have enough time to --

CHAIRPERSON PÉREZ: Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: One of the reasons why I looked at January is not just because of the HAVA requirements, but just with the realizations on the ground that it takes months for training and getting the county workers to get acquainted with the equipment, so that when they actually are implemented in June, that we don't have a catastrophe. Because, I mean, as we saw in the Bay Area, there were simple solutions that weren't found because most of the workers or a good chunk of the workers out there weren't familiar with the systems and weren't equipped to be able to handle the questions.

Hello, Mr. Miller.

So I mean, I think that -- yeah, three months makes sense. But three months plus three months I think makes a lot more sense.

CHAIRPERSON PÉREZ: And I share Mr. Bustamante's
concerns, and it's also informed not by experience as we
had here in California, but by what we saw in the Florida
primary problems they had in terms of acquiring a
technology and then trying to rush to implement the
technology.

And, again, I'll go back to the same point I made
in terms of voter confidence in the system. And I think
that the problems they had there primarily were
significantly training issues impacted by their rapid
transition did nothing to increase voter confidence with
their election.

Mr. Miller.

STAFF CONSULTANT LEAN: Can I make one more
point?

But also that was the deadline for them to submit
their project documentation plan. They don't have to
necessarily have it installed and in working order in
order to come to your Board, or they could have already
had it installed and ready to go. And if everyone is
trying to meet this January 1, 2006, deadline that's been
moved out -- because you might have already met it, have
your contract. But as you know, the project documentation
requirement is a big task for a county. They have to
submit a lot of paperwork for us to review in order to get
their money. So giving them a few more months, even if it
not substantial, it gives them a few more months to submit
the package to your Board.

CHAIRPERSON PÉREZ: You raise an interesting
issue. They could be compliant and just not have their
paperwork up to speed in terms of the money.

STAFF CONSULTANT LEAN: In moving it to June, you
might want to consider it, too. That's when the election
is. They're not going to have staff available to them in
order to come here and present their project documentation
plans. Keep that in the back of your mind.

CHAIRPERSON PÉREZ: What I'd like to do is go to
Mr. Miller, just because I appreciate you coming down here
so quickly. Thank you for doing that.

We've been having over the course of our last two
meetings discussions about the time line with respect to
project documentation plans for counties. And one of the
possibilities before us is to move our deadline to be
January 1st, 2006, consistent with HAVA deadlines. And
Mr. Bustamante had a series of questions with respect to
that. And we appreciate your helping us work through
those questions.

MR. MILLER: I'm Tony Miller with the Secretary
of State's Office.

BOARD MEMBER BUSTAMANTE: My question was, what
happens to -- do we know what will happen to counties or
the state if we don't meet the January 1 HAVA requirement?

MR. MILLER: We will get to visit with the
attorneys from the U.S. Department of Justice. The
Department of Justice has the enforcement responsibilities
under HAVA. And if states don't comply with the HAVA
requirements, then the U.S. Department of Justice has the
responsibility to seek enforcement by typically filing a
lawsuit in federal district court compelling compliance.
The U.S. DOJ has done that already with respect to one
California county and another county out of state to
enforce compliance with respect to activity at the March
2004 election.

BOARD MEMBER BUSTAMANTE: So would one of those
actions that DOJ could take be a return of funds?

MR. MILLER: DOJ itself would not have that
authority, but a court might have that authority. The law
itself is unclear with respect to what remedies the court
would have. And it's anybody's guess at this point
whether a court could impose a monetary penalty, including
the return of the money. But failure to comply with the
disability and access, for example, would almost certainly
result in a lawsuit.

The one exemption with respect to return of
money, so-called Section 102 money, which goes to replace
punch card voting systems, if money doesn't go to replace
punch card voting systems, that money does have to be returned, the money that was not used, to replace punch card voting systems. That so-called Section 102 money, that money does go back.

But with respect to the provisions that kick in January 1, 2006, the Title 2 provisions, there's no automatic return of the money. But there's an automatic likelihood of a lawsuit being filed by the U.S. Department of Justice against the non-compliant county and the State of California. And a court could impose monetary penalty, including the return of money.

BOARD MEMBER BUSTAMANTE: On the 102 moneys, have they all been fully allocated?

MR. MILLER: No. There's still about $2 1/2 million. There's twelve counties that have not applied yet for the money. Sixteen counties have received their allocation, and two additional counties, Stanislaus and San Bernardino, were waiting for the final spending authority to be granted.

BOARD MEMBER BUSTAMANTE: What about the 301 moneys?

MR. MILLER: The 301, or so-called Section 251 money, the state plan money --

BOARD MEMBER BUSTAMANTE: Are those in jeopardy of being lost?
MR. MILLER: If there's non-compliance with --

BOARD MEMBER BUSTAMANTE: If they haven't been
allocated by January the 1st, do they have a chance of
being lost?

MR. MILLER: We received $94 million, which is in
the State of California's bank account. Another $169
million is expected. All of that money is designed to be
allocated to comply with Title 2 --

BOARD MEMBER BUSTAMANTE: By January 1st?

MR. MILLER: Well, most of this goes into
effect -- some stuff is already in effect.

CHAIRPERSON PÉREZ: Let me ask a clarifying
question, I think.

MR. MILLER: Yes, Mr. Chairman.

CHAIRPERSON PÉREZ: The 301 money is not -- the
outcomes are expected by January 1, 2006, but the
expenditure or distribution of those funds, is there a
similar time requirement on them?

MR. MILLER: It's unlike the Section 102 money,
punch card replacement money. There's no 301 money, per
se. There's Title 2 state plan money. This is $261
million, and is to comply with all the provisions of Title
2, which includes accessibility, which includes the
statewide database, and some other things. Most of those
provisions do become operative January 1, 2006.
CHAIRPERSON PÉREZ: The distinction I'm trying to ask for is the provisions being operative is a question of outcomes, my word, not the technical word. But is there a parallel expectation of expenditure?

MR. MILLER: Yes. But it's not definitive as with Section 102.

CHAIRPERSON PÉREZ: Thank you. Forgive the inelegant phrasing of the question. I think your answer gets to what I was --

MR. MILLER: Section 102 was allocated based on $3100 per precinct. Any precinct that doesn't comply, that money goes back automatically.

CHAIRPERSON PÉREZ: Got it.

BOARD MEMBER BUSTAMANTE: Let me try it inelegantly. I'm just trying to figure this out. I mean, we're in a situation right now we're trying to figure out whether or not we want to extend the deadline. But we don't know if we extend the deadline what ramifications there will be. My simple question is one of trying to inform the counties. I want to know in order for me to be able to make decisions, what happens on January the 2nd? What happens to the HAVA funds on January the 2nd? Do we have a fight on our hands with the federal government? Is there an automatic trigger that pulls the money back? Do they do nothing and still wish
us well? What happens?

MR. MILLER: There is no automatic trigger in terms of return of the money. The consequences of complying with provisions of HAVA on January 1, 2006, is litigation probably, a lawsuit, and a court ultimately taking action. And I cannot be presumptive with respect to what a court might do. There's no automatic trigger as with Section 102 where the money automatically goes back.

BOARD MEMBER BUSTAMANTE: Have you asked the question?

MR. MILLER: Of EAC and the Department of Justice. The fact of the matter is nobody knows what a court would do.

CHAIRPERSON PÉREZ: Mr. Miller, if I may, non-compliance and potential triggers with respect to DOJ and potential litigation, the triggers with respect -- the measure of non-compliance is not the expenditure or lack of expenditure of the money; correct?

MR. MILLER: Correct. It's the results.

CHAIRPERSON PÉREZ: That's the distinction I was trying to get, that the compliance questions are outcome-driven, not expenditure-driven, is my way of phrasing it. We're on the same --

MR. MILLER: Yeah. You're correct. But obviously in order to have the outcome, money is required.
CHAIRPERSON PÉREZ: Right. But it doesn't necessarily require expenditure of 100 percent of the money. You could potentially get to the outcome with an expenditure with a lesser percentage.

MR. MILLER: That is correct.

CHAIRPERSON PÉREZ: That still doesn't answer your question, but it answers mine. I'm the Chairman, so I get my questions answered first. Go ahead.

Mr. Kaufman, do you have any questions?

MR. MILLER: I apologize if I haven't been able --

CHAIRPERSON PÉREZ: Go ahead, Mr. Bustamante.

MR. MILLER: If you want to give me another shot, I'll try again. I'm sorry.

CHAIRPERSON PÉREZ: Did you ever watch the TV show, "What's My Line?"

MR. MILLER: I'm not that old, Mr. Chairman.

With Kitty Carlisle and Bennett Cerf, no, never seen it.

CHAIRPERSON PÉREZ: Specially not Bennett Cerf.

Mr. Bustamante. I think the answer is we haven't asked the question.

BOARD MEMBER BUSTAMANTE: Yeah, we haven't, it doesn't sound like.

The Department of Justice -- the folks at Justice aren't the ones that are administering HAVA, right? There
is a separate group, and I can't remember. DOC --

MR. MILLER: The EAC, Elections Assistance Commission. But the EAC has no enforcement powers.

BOARD MEMBER BUSTAMANTE: No, but they have a pretty big swagger at the party. And, you know, I mean, if those folks have a feeling about things or, you know, want to make a point, I'm certain there are members of Congress and the Administration that are willing to listen to what they have to say.

MR. MILLER: The EAC has a regulatory authority. They do carry a stake in terms of, indeed, the power of the podium. DOJ is the one that keeps reminding us they have --

BOARD MEMBER BUSTAMANTE: They have a loaded gun.

But has EAC at all indicated what would happen after January the 1st? Second question is, if they haven't, have we asked them?

MR. MILLER: They have indicated they will refer the matter to the Attorney General, Department of Justice, U.S. DOJ for enforcement action. That's what they've said.

BOARD MEMBER BUSTAMANTE: They've said that?

MR. MILLER: Yes, they have.

BOARD MEMBER BUSTAMANTE: So there isn't any reason to believe they wouldn't want to come after the
funds and take them back and reallocate them perhaps somewhere else?

MR. MILLER: They may, indeed, want to do that, but they have not said that. And the HAVA itself does not provide for that.

BOARD MEMBER BUSTAMANTE: Okay.

CHAIRPERSON PÉREZ: Mr. Kaufman, any questions?

VICE CHAIRPERSON KAUFMAN: No. I think you've covered it.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: No questions for me.

CHAIRPERSON PÉREZ: Would the non-attorney on the phone like to ask any questions, Mr. Guardino?

BOARD MEMBER GUARDINO: No, no questions.

CHAIRPERSON PÉREZ: Okay. I've got nothing further for Mr. Miller.

Do you have any, Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: No. I have a headache.

CHAIRPERSON PÉREZ: Mr Miller, as always, thank you for helping us.

MR. MILLER: Thank you, Mr. Chairman. I will stay. If I can be of additional assistance, I will try, Mr. Bustamante. I will try.

CHAIRPERSON PÉREZ: Okay. So where we were with respect to Item VI, A, was I sense a consensus from the
four of you with respect to a January 1st, 2006, deadline.
I'm a little more predisposed to open-ended, but that's
just me being gushy and easy going today.

BOARD MEMBER BUSTAMANTE: What happened?

CHAIRPERSON PÉREZ: I had more caffeine today.

But four members is a clear consensus. Is there
a motion along these lines?

BOARD MEMBER BUSTAMANTE: Yes, Mr. Chairman.

VICE CHAIRPERSON KAUFMAN: This is Stephen
Kaufman.

I will make a motion to adopt staff
Recommendation 1, which is to extend the deadline to
January 1, 2006, and to require interim status reports
from the counties, which I guess we will also have to
discuss in terms of mechanically how we want to deal with
those.

BOARD MEMBER FINNEY: I'll second.

BOARD MEMBER BUSTAMANTE: I'd second.

CHAIRPERSON PÉREZ: Mr. Bustamante actually beat
you to the punch, Mr. Finney, but thank you.

Mr. Kaufman, a question for you. Would you feel
comfortable with an amendment that asks for the interim
report July 1st since that was the deadline we were
looking at anyway and it's not springing a new date on
counties?
VICE CHAIRPERSON KAUFMAN: Yeah. I think I'm comfortable with that date. We may even want to add another one if we wanted to do one in September or what have you. But certainly comfortable with at minimum a July report date.

CHAIRPERSON PÉREZ: And Mr. Bustamante is also comfortable with that?

BOARD MEMBER BUSTAMANTE: Yeah.

CHAIRPERSON PÉREZ: So let the motion reflect their willingness to have the referenced interim report be a July 1st, 2005, interim report.

On the item, any discussion?

Hearing none, Debbie, why don't you call the roll on this?

EXECUTIVE ASSISTANT PARSONS: John Pérez?

CHAIRPERSON PÉREZ: Aye.

EXECUTIVE ASSISTANT PARSONS: Michael Bustamante?

BOARD MEMBER BUSTAMANTE: Aye.

EXECUTIVE ASSISTANT PARSONS: Tal Finney?

BOARD MEMBER FINNEY: Aye.

EXECUTIVE ASSISTANT PARSONS: Carl Guardino?

BOARD MEMBER GUARDINO: Aye.

EXECUTIVE ASSISTANT PARSONS: Stephen Kaufman?

VICE CHAIRPERSON KAUFMAN: Aye.

CHAIRPERSON PÉREZ: We have unanimous consent
there. Okay. Very good.

Next item before us is Item IV, B, which is consideration of policy to request the counties to give us a detailed interim report.

And for that, Ms. Parsons.

EXECUTIVE ASSISTANT PARSONS: Included in your packet is a sample of a format of the interim status report. The counties who have not yet submitted their project documentation plans would be asked to submit this form with answers to five questions which are on the form. The staff believes that by using this format the VMB would gather enough information on the counties' modernization status without placing a huge burden on their time. This report could be incorporated using the additional report's language already included in the procedure guide.

The Board may want to consider asking the counties who are implementing their voting system conversion in phases to also submit this interim report on their next plan phase. This could assist the VMB with determining when the voting modernization funds will be needed. And the Board would need to make a motion to require this formal report from the counties and also to include the format as Appendix F in the Voting Modernization Act of 2002 Funding Application and
CHAIRPERSON PÉREZ: Thank you, Ms. Parsons.

Mr. Bustamante, any questions? No.

Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: No.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: No.

CHAIRPERSON PÉREZ: If there is no -- never mind.

I won't go to the questions.

Mr. Guardino?

BOARD MEMBER GUARDINO: No.

BOARD MEMBER BUSTAMANTE: This would be the July 1?

CHAIRPERSON PÉREZ: This would be the July 1.

Is there a motion to concur with staff recommendation?

BOARD MEMBER BUSTAMANTE: So moved.

VICE CHAIRPERSON KAUFMAN: I'll second.

STAFF CONSULTANT LEAN: Would you like to have a little discussion on the phased approach on those counties who are -- I just --

CHAIRPERSON PÉREZ: Sure. Go ahead.

STAFF CONSULTANT LEAN: I just thought that perhaps you might want to take a look at that. That isn't something that's necessary. But you might want to have a
little discussion on that. But it's just a recommendation of staff that you consider that, because these counties who are doing different phases, they haven't started their next phase, and you may want to consider that.

CHAIRPERSON PÉREZ: You're suggesting that this also be used for interim phases that have yet to be begun by counties who have submitted their plan?

STAFF CONSULTANT LEAN: That's correct.

CHAIRPERSON PÉREZ: Okay.

STAFF CONSULTANT LEAN: That would be a new requirement. This isn't a requirement for any of the counties who haven't moved forward. But the counties that have moved forward that are in a phased approach so the Board would know where they are in that second phrase. It just doesn't necessarily have to be what the Board chooses to do. Just wanted to bring that forward as a possibility.

BOARD MEMBER BUSTAMANTE: Didn't we have a requirement? I thought we had something.

CHAIRPERSON PÉREZ: No. We asked them to delineate what their phases are, but this is a little more active, a very early shot delineation. And I think it's pretty consistent with the overall recommendation.

So who was the maker of the motion?

BOARD MEMBER BUSTAMANTE: That would be me.
CHAIRPERSON PÉREZ: Mr. Bustamante.

And the seconder was Mr. Finney?

BOARD MEMBER BUSTAMANTE: Kaufman.

CHAIRPERSON PÉREZ: Mr. Kaufman, you're comfortable with that?

VICE CHAIRPERSON KAUFMAN: Yes.

CHAIRPERSON PÉREZ: Anything else on this?

Debbie, would you call the roll?

EXECUTIVE ASSISTANT PARSONS: John Pérez?

CHAIRPERSON PÉREZ: Aye.

EXECUTIVE ASSISTANT PARSONS: Michael Bustamante?

BOARD MEMBER BUSTAMANTE: Aye.

EXECUTIVE ASSISTANT PARSONS: Tal Finney? Tal Finney?

BOARD MEMBER FINNEY: Aye.

EXECUTIVE ASSISTANT PARSONS: Carl Guardino?

BOARD MEMBER GUARDINO: Can you hear me? I'm having trouble hearing Debbie. I'm hearing the Chairman really well.

CHAIRPERSON PÉREZ: Carl, are you in concurrence with us on this?

BOARD MEMBER GUARDINO: Yes.

CHAIRPERSON PÉREZ: Stephen Kaufman?

VICE CHAIRPERSON KAUFMAN: Aye.

CHAIRPERSON PÉREZ: Very good. Again, you got us
all in agreement.

The next item I have before us is Item IV, C, which is additional funding rounds. Let me try to take a very quick stab at this.

There are no additional funding rounds until we use up or determine whether we're using up the money in the additional funding round -- I mean the initial funding round. So I would suggest we put this over until we have an expression by a county that they're not going to use their money or some other change in status with respect to money we've already allocated.

BOARD MEMBER BUSTAMANTE: Is there supposed to be a question mark after this?

CHAIRPERSON PÉREZ: Is there general consensus with my position on this?

BOARD MEMBER BUSTAMANTE: Yeah.

CHAIRPERSON PÉREZ: Hearing no objection, the next item I have is Item C, Other Business. And I have one card for Item C. I have a card for an an initial R. Cohn. Please come forward. Item 7, sorry.

MS. COHN: As I said at the earlier hearing, I'm a layperson here. And I certainly was not expecting to speak three times today. But my comments actually have changed since you began speaking. You know, this process began --
CHAIRPERSON PÉREZ: Would you give us your full name?

MS. COHN: My name is Rafaella Cohn.

I want to say first of all that I appreciate the action of the Panel. The comments by Ms. Atkinson, the Registrar from Somona, and the exchange between Panel members and Mr. Miller highlighting the position the counties are in provided me with a great deal of additional detail and information.

I think it's critical not to impose an artificial time line. Reporting requirements are one thing. Depriving counties of money one thing, a very important piece. But compromising voter integrity is even far above all that. My biggest concern -- and I'm going to say this. I realize this is kind of an idealistic statement or maybe a naive one. But I don't understand why the Department of Justice or any federal agency would stand in the way of ensuring that the next set of elections are the best possible set of elections they can be. And I think that would be my position if somebody from DOJ were standing right in this room right now.

My concern is that we've jumped to the conclusion -- and Mr. Miller, it sounds like you've already had substantial interactions such that you believe that on January 2nd, California would come in for some
I would like to propose -- and, again, I'm just a person from somewhere out there. Okay. But it sounds to me like there's such a thing -- I mean, I know there's such a thing as stipulations, provocatively, say hey, guys, we might need more time. What ever happened to entering into some agreement along the way? I'm only speaking for myself, but I would bet you there's a lot of voters out there who would, if they knew the situation, would get behind the state of California and support taking the time that's needed for these machines to get in order.

And the other piece of that is that I'm really a little bit confused about sort of -- and I'm not going to ask anybody to clarify this here. But I just want to give you some feedback. I'm a little confused about what this money would be used for when you talk about like either upgrading old systems, or are you talking primarily about verifying tape trails? Or are you talking about other kinds of --

CHAIRPERSON PÉREZ: Our general practice is not to respond to questions during this time, but we'll do it because I think it's an important one.

As we discussed retrofitting, we were talking about adding voter verifiable paper audit trails to DREs.
the counties may have already purchased.

   MS. COHN: Once again, I think based on your
answer, I would say that, you know, given what -- you
know, the buzz that's existed here around all the stuff
that's gone on in this nation, around elections, you know,
I, as one citizen, want to really support us doing
everything possible we can to support the counties to do
what they have to upgrade their systems and get paid and
share money and all that good stuff.

   There's, I'm sure, much more I could say, but I
don't want to take more time. I did want to say one more
thing, which is I thought Mr. Berkman raised a very
important point about additional vendors or people who may
not be knowledgeable about the system and sort of how to
work it, but have really good ideas about new kinds of
machines. So whatever you can do to support that and
throw money towards people who are into those new kinds of
technologies, I really support that. I'm sorry about all
the time.

   CHAIRPERSON PÉREZ: Thank you very much.

   Any other business that any other members would
like to raise before we adjourn?

   STAFF CONSULTANT LEAN: You moved the county
retrofitting --

   CHAIRPERSON PÉREZ: Which one did I move?
STAFF CONSULTANT LEAN: You moved down to discussion. You said we could move it down to Other Business, the county's retrofit money. I think this was already addressed. But that was something you moved down to Other Business.

CHAIRPERSON PÉREZ: No. I thought that we dealt with that in our discussion of what was previously Item V, C, which is the discussion around the funds available through the 301 Task Force.

STAFF CONSULTANT LEAN: I just have that in my notes. Just want to clarify.

CHAIRPERSON PÉREZ: Okay. I want to make a closing comment before we adjourn.

This is a difficult process for all of us. And I think that, as one of the issues in play is voters' confidence in voting technology and the integrity of votes cast in this state and other places, that it's important to note the work not only of the Secretary of State's staff and the staff that helps us on a regular basis, but quite frankly, the work of the registrars and election officials throughout the state.

None of them take the challenge before us lightly. And all of them are really trying to make sure that as we go through this process, even as we disagree about time lines, that first and foremost for all of them
is being able to conduct elections in a way that are both efficient, in a way that protects the integrity of the election process, and in a way that maximizes the confidence the voters have they were able to do those two things.

I want to thank all the staff from the Secretary of State's Office and the folks representing the counties who are here for their continued work, anything along those lines.

Anything else before we adjourn?

STAFF CONSULTANT LEAN: I have some housekeeping items.

With the motion you made on the interim report, we will release that to the counties as soon as possible. We will have the July 1st, 2005, as a deadline for that report. We have a meeting scheduled for July 21st. I believe staff can say we will have this information available for you at this meeting.

The next scheduled Voting Modernization Board meeting is March 17th, 2005. The only agenda item that we've moved forward is the update on the Voting Modernization Fund Pool of Money and the Bond Sales. If we do not receive a project documentation, which I don't anticipate doing such, from a county, that would be the only agenda item at the next meeting. So I open it up to
the Board members to let us know if you want to continue
to schedule that meeting.

CHAIRPERSON PÉREZ: What's the pleasure of the
Board? If that's all that's before us, do you want to
just put off the March meeting? If we don't receive a
project documentation plan, then let's put off the
meeting. Please inform us as soon as you determine
whether or not we have any project documentation plans.

STAFF CONSULTANT LEAN: Next week is the
three-week deadline, next Friday, so we will know at that
time so we can send an e-mail. We can give you an interim
report, not a full staff report. But I will inform the
Chair of any updates we get on that item.

CHAIRPERSON PÉREZ: Very good. Thank you. With
that, we stand adjourned.

(Thereupon the Voting Modernization
Board meeting adjourned at 3:27 p.m.)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of March, 2005.

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