APPEARANCES

BOARD MEMBERS
Mr. John A. Pérez, Chairperson
Mr. Stephen Kaufman, Vice Chairperson
Mr. Michael Bustamante
Mr. Tal Finney
Mr. Carl Guardino (via teleconference)

SECRETARY OF STATE
Mr. Bruce McPherson

STAFF
Mr. John Mott-Smith, Chief, Elections Division
Mr. Michael Kanotz, Staff Counsel
Ms. Jana Lean
Mr. Bruce McDannold
Ms. Katherine Montgomery
Mr. Chris Reynolds

ALSO PRESENT
Ms. Janice Atkinson, Sonoma County
Mr. Alfie Charles, Sequoia Voting Systems
Ms. Vicki Fraiser, Del Norte County
Mr. Joe Holland, Santa Barbara County

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
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PROCEEDINGS

CHAIRPERSON PÉREZ: I'd now like to call to order the February -- February, I wish -- the Friday, September 23rd meeting of the Voting Modernization Board.

If you'd please call the roll.

MS. MONTGOMERY: John Perez?

CHAIRPERSON PÉREZ: Here.

MS. MONTGOMERY: Stephen Kaufman?

VICE CHAIRPERSON KAUFMAN: Here.

MS. MONTGOMERY: Carl Guardino's on the phone, correct?

Carl, are you there?

BOARD MEMBER GUARDINO: Yes, ma'am.

MS. MONTGOMERY: Michael Bustamante?

BOARD MEMBER BUSTAMANTE: Here.

MS. MONTGOMERY: Tal Finney?

BOARD MEMBER FINNEY: Present.

CHAIRPERSON PÉREZ: Well, we actually have a full complement. Thank you all for being here. And I'm happy that we're able to start as close to time as ever.

The first -- we obviously have a quorum.

The first item on our agenda as printed is public comment. But before we get to public comment I'd like to actually dispense with a normal order of business and ask our Secretary of State to come forward and he can address...
us, if there's no objection.

Mr. Secretary.

SECRETARY OF STATE McPHERSON: Thank you, Chairman Perez, Board members, and Carl via the phone. I appreciate your being here today.

I wanted to address a subject. We're right now at a crossroads in efforts to modernize our voting equipment. On the one hand we have clear mandates to upgrade voting equipment under the Voting Modernization Board -- or Bond Act -- excuse me -- and the Help America Vote Act of 2002.

On the other hand there has been an evolution of thought and public policy on what it means to upgrade voting equipment that occurred after the enacted of these sweeping policies, both on the federal and state level. For instance, half of the nation including California now requires a Voter Verified Paper Audit Trail to be a component of any voting system. And national voting system guidelines that further refine HAVA mandates are still being considered right now. They are due next month. That would be in October.

As policy makers and policy implementers, the VMB and the Secretary of State have an obligation to the voters and to the taxpayers. The voters deserve to have secure accurate voting systems and enjoy the full faith of
the public. The foundation of any democracy worthy of
name is a public confidence in the electoral process.

And the taxpayers have a right to expect that the
one-time funds provided under the Bond Act of 2002 and the
HAVA Act get spent wisely and fulfill these public
mandates.

As we weigh the ability of new technologies to
meet new mandates including the need for accuracy,
security, accessibility and the need to address public
skepticism, time is against us. And it's worth repeating
that nearly $400 million that is presently budgeted to do
the job is one-time money. We get one chance to do the
job correctly. Everyone involved -- federal officials,
state officials, local officials and vendors -- seem to be
working in good faith toward a common goal. And I hope we
will get there and I'm sure we will. But if it is a
choice between doing it fast and doing it right, we have
to emphasize doing it right. The alternative is to
increase the risk to the voters and the taxpayers.

So I'm here today to encourage the VMB to provide
flexibility we need to reduce those risks by extending the
deadline by one year, to January 2007, for counties to
submit project document plans to the VMB.

Although January 1st, 2006, seems like an
appropriate deadline, because that is the HAVA deadline
for compliant voting systems, that deadline alone is not
definitive. For instance, HAVA provides that Section 102
punch card replacement funds, the funds that are being
used by some counties as a match against VMB funds, need
to be expended to replace voting systems by the time of
the first federal election after January 1st, 2006. In
California, barring a special election for federal office,
that means Section 102 funds need to be committed by June

And as I mentioned before, the federal voting
system guidelines will not be out for publicly review
until September 30th, just a couple -- ten days from now,
or maybe by the first part of October. But by mid-October
the Federal Election Assistance Commission hopes to make
those guidelines final. Those will be the most definitive
guidance on HAVA voting system standards. But it will
take some time to fully understand those guidelines.

So in many respects extending the VMB deadline to
January 1st, 2007, is consistent not only with our
practical needs in California but also with the scheme
under existing law.

I thank you for this opportunity to address you
and I ask that you extend this deadline to January 1st,
2007.

CHAIRPERSON PÉREZ: Thank you, Mr. Secretary.
On behalf of the Board, I think I want to thank you for your input and your guidance on this. This is something that we've dealt with several times. And the manner in which you've put this together with the other obligations that the counties are wrestling with is greatly appreciated.

SECRETARY OF STATE McPHERSON: Thank you.

CHAIRPERSON PÉREZ: Anything else before we move on?

VICE CHAIRPERSON KAUFMAN: I just want to thank you for your personal attention and personal involvement in this.

SECRETARY OF STATE McPHERSON: Thank you. Well, that's what I'm here for.

And I do want to say in -- well, it's almost six months now that I was confirmed to be Secretary of State. I've had nothing but great cooperation with the Election Assistance Commission, with the U.S. Department of Justice and, most importantly, with the registrars of the 58 counties of California who really do conduct the elections for the people of California.

CHAIRPERSON PÉREZ: Thank you.

Okay. With that, I'm going to move on with Item 3, which is a period of our meeting set aside for public comment, not on specifically agendized items. I don't
have any cards before me.

Are there any cards for general public comment?

MS. LEAN: No, sir.

CHAIRPERSON PÉREZ: Okay. Very good.

The next item before us, Item 4, is the adoption of our July 27th minutes.

Has everybody had a chance to review them?

VICE CHAIRPERSON KAUFMAN: Yes. And I'll move adoption of the minutes.

CHAIRPERSON PÉREZ: Is there a second?

BOARD MEMBER FINNEY: Second.

CHAIRPERSON PÉREZ: Mr. Kaufman moves, Mr. Finney seconds.

All in favor?

(Ayes.)

CHAIRPERSON PÉREZ: Any opposed?

Okay. Thank you.

BOARD MEMBER BUSTAMANTE: Abstain. I wasn't here.

CHAIRPERSON PÉREZ: One abstention for Mr. Bustamante.

Very good.

Next item before us is Item 5, Project Documentation Submittal Deadlines. And the first item before us is the staff report.
Jana, if you'd like to walk us through this.

MS. LEAN: I want to start off with some background. Then I'll give a staff report and a recommendation.

So to start off with the background. At the December 17th, 2002, meeting of the Voting Modernization Board the VMB adopted January 1, 2005, deadline for counties to receive approval from the VMB for Project Documentation Plans. Under this adoption, counties that did not receive approval by the deadline would forfeit their approved allocations.

At the July 22nd, 2004, meeting the VMB changed the deadline for counties to receive approval for their Project Documentation Plans to July 1st, 2005.

At the February 17th, 2005, meeting of the VMB the VMB again changed the deadline for counties to receive project -- receive approval for Project Documentation Plans to January 1, 2006. The Board members indicated at this meeting that you would be receptive to reviewing the deadline again at a future date if necessary.

Proposition 41 does not have a deadline by which the funds need to be approved or distributed to the counties. The above deadline that we talked about was adopted as a policy and could be reconsidered by the VMB at any time.
It should be noted though that if the deadline were changed, it would postpone the reallocation by the VMB of additional monies forfeited by the counties that did not meet the deadline.

Given that there has been little movement in the availability of certified voting systems for counties to purchase since the VMB adopted the January 1, 2006, deadline and with more than half of the 58 counties yet to begin upgrading their voting systems, the counties I've heard are vigorously supporting the extension of this deadline and they are here today -- some are here today to talk to you.

The original objective of the Voting Modernization Board has been to assist in accelerating the voting system modernization progress in California.

In the interests of this objective, the VMB could again extend the deadline for county system with their Project Documentation Plan but require that each county that does not submit a Project Documentation Plan by December 31st, 2005, begin submitting status reports on the county's progress towards producing a Project Documentation Plan. These reports could be required to be submitted quarterly beginning December 31st, 2005, and continuing until they fulfill the Project Documentation Plan requirement.
Changing the deadline and requiring quarterly status reports would enable the VMB to address the concerns of the counties regarding the availability of the certified systems while giving the Board the ability to ensure that counties are moving forward in modernizing their voting systems.

It should be noted that HAVA requires that voting equipment be accessible by January 1, 2006, the first statewide-federal election -- or which the first statewide-federal election equipment will be used. And that election is June 6th, 2006, primary barring no special elections.

The staff recommendation is to recommend that the January 1, 2006, deadline be extended to January 1, 2007. The staff also recommends that the Board extend the deadline -- if they extend the deadline, that quarterly status reports be required by counties that have not begun submitting a Project Documentation Plan by December 31st, 2005.

CHAIRPERSON PÉREZ: Very good.

Any questions for Jana before we move forward?

VICE CHAIRPERSON KAUFMAN: Actually I just have one.

Under the -- when we moved the deadline this last time, we did request status reports from the counties.
And have those all been being met, those --

MS. LEAN: Those have been met. Those were interim -- we called them interim status reports. Those weren't very detailed in asking them exactly what they were planning. We just basically asked them, "Are you planning to come in for your money?" And they said yes. And asked for an estimate of when they were planning to come in.

I think the quarterly status reports that could be required at this time could be a little more in depth just to make sure that you have enough information to know that they're moving forward.

VICE CHAIRPERSON KAUFMAN: Thank you.

MS. LEAN: We have one public comment.

CHAIRPERSON PÉREZ: Very good.

Why don't you bring that card forward before we move on with our discussion.

Any other questions before we move on to discussion?

Okay. If not, I have a card from Janice Atkinson from Sonoma County.

MS. ATKINSON: Good afternoon, members of the Board. Thank you very much. I am Janice Atkinson. I'm the Assistant Registrar of Voters from the County of Sonoma. And once again I'm here before you requesting an
extension in the deadline for our voting modernization fund project documentation.

Gee, a lot has happened since I was up here last time. And one of those things was that we faced some uncertainty as to the voting system we are currently using, the Mark-a-Vote voting system, which is a grandfathered voting system and had been put back before the Voting Systems Panel to determine whether or not they were going to be able to continue to use that.

And I am happy to report that under the new Secretary of State we have been given authorization to continue to use our grandfathered voting system.

I will say that a good deal of energy and time was taken up in reaching that decision, and it has only recently come forward.

Unfortunately, other than that there are other things that haven't moved as rapidly. And one of those is having new voting systems that counties can consider for voting modernization and for reaching the requirements of HAVA for disability access. Currently in California, there is only one voting system certified that meets the accessibility requirements of HAVA.

The counties need do have more systems to choose between. There's no one-size-fits-all in California certainly. What they use in Alpine doesn't necessarily
work in Los Angeles. So we are hoping that within the
next few months we will have more voting systems certified
who will come forward through Voting Systems Panel and get
certification.

One of the big holdups seems to be at the federal
level. And it was very frustrating for us in California,
because before a system could be certified in California
it has to get federal qualification.

As nearly as I've been able to ascertain, federal
qualification seems to be submitting all your documents to
some black box in -- somewhere, and you don't hear
anything more out of them, because the vendors seem to be
very frustrated getting any information as to where they
are in the federal qualification process.

You know, we are conducting a special statewide
election. It seems like every time we've come up here
we've been saying we're conducting a special statewide
election.

CHAIRPERSON PÉREZ: You have been.

(Laughter.)

MS. ATKINSON: Yeah. Thanks. Feels that way.

You know, quite frankly, the counties are just
kind of buried right now trying to get through the next
couple of months. The idea of trying to purchase a system
right now, even if there were a system available to us,
it's just not feasible. I would hate for my county and other counties in the same situation to have to forgo our voting modernization funds because of the situation we're in.

Thank you.

CHAIRPERSON PÉREZ: Thank you.

Any questions?

Okay. Thank you very much.

Seeing no other cards, any discussion from the Board members?

VICE CHAIRPERSON KAUFMAN: Yeah, I had just -- well, a couple thoughts. One was a question. And I almost hate to ask this question because we ask it every time we're here. But what is -- I'll just put it out there.

What is the status of the certification -- well, when we were last here there's -- I guess there'd still be software certification issue for the one piece of equipment that has been certified subject to a contingency.

So I guess my first question is: Where are we with this?

MS. LEAN: We do have a new voting system expertise person here in our office. His name is Bruce McDannold. And he's sitting right here next to me. And I
think we could give you a couple -- at least some updates
on where we're at.

VICE CHAIRPERSON KAUFMAN: Please don't tell us
it's 30 days away, because we've heard that.

MR. McDANNOLD: No. Currently we have, as we've
had for some time, a system that is fully -- appears to be
fully compliant with both HAVA and the mandate for a Voter
Verified Paper Audit Trail. That system is produced by
Sequoia. That system still has a condition on it that it
cannot be used in a California primary election due to
some issues with the software.

Sequoia still -- last word we've had from them --
intends to bring that forward before the end of the year
for a new version for recertification that will make it
fully compliant and resolve the issues on the primary.

Since June -- I'm not sure when the last time you
all met -- we've certified a voting system from Election
Systems & Software, ES&S, that does not have a DRE
component, but has a touch screen device to mark a ballot
and that's called the AutoMARK. And that system has been
certified.

The other major vendors in the state that we have
currently. Diebold Election Systems is coming forward for
re new testing next week. And if that's successful, it's
possible that within the next 60 to 90 days they could
become certified as well.

The last major vendor is used by Orange County, is Hart and Hart InterCivic is planning to come forward with a modified version of their system that includes a paper trail. And currently they're targeted to come in in December.

So those are the major vendors. We're having ongoing meetings and discussions with several other vendors. There's a proposed modification to the InkaVote system that we had preliminary testing of I believe in August. They had some issues. They're back with -- to get those issues resolved before they can come forward to us again.

VICE CHAIRPERSON KAUFMAN: So as far as our current January 1 deadline, as of today and potentially through the end of the year any county looking to implement a DRE system, there is no system that's completely certified without contingencies for the counties to purchase?

MR. McDANNOLD: No, that's not true. The Election Systems & Software optical scan system with the Mark-a-Vote voting devise --

CHAIRPERSON PÉREZ: But he asked a question about DRE.

MR. McDANNOLD: There has been -- there's only
one DRE system that has been certified, and that still has
a condition on it.

CHAIRPERSON PÉREZ: Right. And, quite frankly --
and the condition is with respect to primaries, which
would in all likelihood be the first instance in which the
counties would need this switch-over?

MR. McDANNOLD: Yes, that's correct.

VICE CHAIRPERSON KAUFMAN: Okay.

CHAIRPERSON PÉREZ: Any other -- Mr. Bustamante,
would you like to ask your regular question?

BOARD MEMBER BUSTAMANTE: That was my question,
so --

VICE CHAIRPERSON KAUFMAN: Sorry.

BOARD MEMBER BUSTAMANTE: No, that's okay.

CHAIRPERSON PÉREZ: Well, you know -- go ahead,
Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: So basically really
between now and the end of the year there probably --
there might be a system -- between now and the end of the
year there might be a system, a DRE system, probably not?
And between now and the beginning of the third quarter the
likelihood -- the third quarter of 2006 the likelihood of
additional systems coming on line for counties to be able
to choose from is pretty slim too, right? Because when
you say things are coming up in November or December, I
mean that's when they're beginning the certification

MR. McDANNOLD: No, those are when the vendors
are proposing to be done with the estimating, to be done
with the federal testing process and coming forward to
us --

BOARD MEMBER BUSTAMANTE: -- for your --

MR. McDANNOLD: -- for our certification.

BOARD MEMBER BUSTAMANTE: I see. So --

MR. McDANNOLD: By the time they apply to us and
submit a complete application, we're trying to schedule
our testing within a of couple weeks, the whole process
beginning to end probably six to eight weeks.

BOARD MEMBER BUSTAMANTE: A contract of double --

okay.

VICE CHAIRPERSON KAUFMAN: Can I ask a follow-up
on that?

And so reasonably speaking, I mean once a system
gets certified -- it gets federal certification, state
certification -- the realistic time for a county to begin
the contracting process with those vendors and even be
able to purchase equipment and get it in place, I mean
what are we talking about, the reality, once a system is
certified?

MR. McDANNOLD: I'm hesitating to speak to the
counties and their processes, because that's not where
my --

CHAIRPERSON PÉREZ: Well, I think the question
is --

MR. McDANNOLD: So, yes, realistically they can't
purchase it until it's been certified and there's a
process afterwards that they have to go through in
procurement.

CHAIRPERSON PÉREZ: Well, and then I think the
other element of the question isn't just the ability for
counties to then move through their internal processes,
but the ability for a vendor to actually be up and running
with a sufficient number of instruments for the counties
to be able to use them, especially when you're talking
about a truncated time period when all the different
counties that are struggling to get appropriate sets of
equipment.

MR. McDANNOLD: Agreed.

BOARD MEMBER BUSTAMANTE: In the past, experience
has been somewhere in the neighborhood of about like a
little over a year, almost a year and a half, right, I
think from the time the counties begin to have
discussions, complete -- or complete those discussions,
actually purchase equipment, go through the training
process and then have the ability to use them? It seems
like nothing has ever happened under a year. And as
memory serves, I thought it was -- the process was
somewhere in the neighborhood of a year and a half, right?
MR. McDANNOLD: I would have to let the counties
speak for that. But I again certainly state that the more
we compress the schedule, the more risk we're taking of
failure in an election.
BOARD MEMBER FINNEY: And what point during that
process must the counties submit their project
documentation -- I should say formulate their project's --
their Project Documentation Plans? That's the other
question, right?
CHAIRPERSON PÉREZ: Well, obviously they can't
begin that process until there's a system that's available
to them.
BOARD MEMBER FINNEY: Completely certified and
available, but what about approved and contracted and et
cetera? I mean that's the question. If we extend out one
year longer than we had originally planned, is that still
not long enough? I mean that's what I'm asking.
But, you know -- I think we originally adopted
this policy in the absence of such a provision existing in
the initiative and for us to try to incent counties to
move as quickly as possible. But of course in those early
days we were all filled with stars in our eyes and lots of
hopes at the pace at which this process would move. Having said that and having now watched for a couple of years while it's kind of dragged out on the certification front, you know, I guess the question I would ask is, you know, at what point would counties be comfortable developing and publishing a Project Documentation Plan? Is it after certification of a number of systems and prior to their contracting with an entity?

CHAIRPERSON PÉREZ: Well, I think what we've heard from some counties is that -- that they want obviously: The greater amount of choice they have in figuring out from a variety of different vendors and sets of equipment, the greater their options are to find the appropriate systems for their specific county. I mean we are an incredibly diverse state with respect to the composition of challenges for running elections from county to county.

So the item before us or recommendation before us is whether or not to extend out a year. I think that anything less than that year would definitely not afford counties the greatest amount of choice. The reality may very well be that that year ends up not being enough time.

BOARD MEMBER FINNEY: Right.

CHAIRPERSON PÉREZ: But I feel very comfortable with us moving forward, adopting that one-year extension,
and revisiting it, if necessary, as we've done now at least twice, to be responsive to the needs of the counties as they move forward through the real world.

BOARD MEMBER FINNEY: And the policy that I think that we originally fleshed out a couple years ago when we first did this could still be kind of -- how shall I say this? I'll have a placeholder given the staff recommendation for quarterly reports. I want their to continue to be -- you know, while I know that the counties are the victims of the certification process right now, I still want there to be some incentive to kind of keep the project moving forward.

CHAIRPERSON PÉREZ: I think the staff recommendation has that as an element of it and -- Mr. Kaufman.

VICE CHAIRPERSON KAUFMAN: No, I just -- I wanted to comment on whether a year is enough. I would agree, that I think at least a year seems to be sane and reasonable under the circumstances. But we are talking about a deadline for a Project Documentation Plan. Payments can be made well beyond a year to the counties. And I would think, given the federal mandates that are in place, unless something changes on that front, everyone's going to have something in place.

BOARD MEMBER FINNEY: Right. I just don't want
us to lose site of the impetus behind this initiative. I mean it was the public that voted for this. And we're all here to help implement this.

And I think that it's a concern of the public that our system be modernized. And we had a very interesting presidential election that was associated with this issue. We've had other issues arise since then. And I just -- California's always been at the forefront of just about everything -- I like to brag -- and I'd like to keep us there if possible.

CHAIRPERSON PÉREZ: Well, let me respond to the public.

Yes, the public, you know, did pass this initiative. Within the initiative they empowered us to make certain actions to implement consistent with the initiative.

I think what we've also seen is as we were first impaneled there was a sense that this was going to be a quick move towards DRE's. As a variety of sets of public discussions happened around both the opportunities and the challenges of DRE's, how the public interpreted what they had previously done I think changed over time.

BOARD MEMBER FINNEY: I think so too.

CHAIRPERSON PÉREZ: And that's, you know, obviously one of the complications in governing by
initiative, is that you give a straight up or down option and unfortunately too often not a chance to figure out the nuances that are necessary for implementing the will, if not the letter. And unfortunately in this case a board was impaneled to figure out those areas. And I think that as long as we continue to be driven by both the mandate of Prop 41 and the spirit of it in terms of how we implement it, that we should continue on in the path that we're going.

Is there a motion?

VICE CHAIRPERSON KAUFMAN: I'll move to adopt the staff recommendation that the deadline for submittal of Project Documentation Plans be extended from January 1, 2006, to January 1, 2007; that quarterly status reports be required of counties that have not submitted Project Documentation Plans by that date; and that we reserve ability to review this again as we progress through 2006.

BOARD MEMBER FINNEY: I'll second that.

CHAIRPERSON PÉREZ: Mr. Kaufman man moves, Mr. Finney seconds.

BOARD MEMBER BUSTAMANTE: Mr. Chairman?

CHAIRPERSON PÉREZ: Yes, Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: With regard to the status reports then, would it be appropriate to ask the counties to give us a little bit more information than
what they're giving us now? I mean I'd be comfortable --
I'd like to know, for instance, what the status of the
discussions are with vendors. I haven't -- you know, just
that they're ongoing, you know, they've begun or they
intend to have discussions starting on a certain date.
And also the question about whether or when they intend to
go before the board of supervisors -- with their board of
supervisors with any kind of -- any kind of plan. Some of
them may already have, but some of them may not have.
Because obviously staff has to go through that process.
In fact, staff may have to go before the board of
supervisors first before any conversation would even take
place with a vendor or vendors. So --
MS. LEAN: How about you let us, staff, come up
with some proposed language to be in that report, and
we'll report back to you at the October meeting.
BOARD MEMBER BUSTAMANTE: Great.
CHAIRPERSON PÉREZ: Okay. If you'd call the
roll.
MS. MONTGOMERY: John Perez?
CHAIRPERSON PÉREZ: Aye.
MS. MONTGOMERY: Stephen Kaufman?
VICE CHAIRPERSON KAUFMAN: Aye.
MS. MONTGOMERY: Michael Bustamante?
BOARD MEMBER BUSTAMANTE: Ayes.
MS. MONTGOMERY: Tal Finney?

BOARD MEMBER FINNEY: Ayes.

MS. MONTGOMERY: Carl Guardino?

BOARD MEMBER GUARDINO: Aye.

CHAIRPERSON PÉREZ: Very good.

The next item we have before us is Item 6, Project Documentation Package Review and Funding Awards.

We have two counties to come before us today.

The first county is Del Norte County.

And, Jana, if you'd walk us through Del Norte.

MS. LEAN: Okay. Del Norte County is approved.

Voting Modernization Board allocation is for $164,420.41.

They are proposing to purchase the AVC Edge touch screen; units, 64; and the VeriVote printers -- DRE printers, 74 units. They're also proposing to purchase the Optech Insight precinct counters to their absentee system.

Del Norte County anticipates receiving their new voting equipment in December of '05. The county plans to begin using this equipment in the June 6, 2006, primary election.

Del Norte County projects that their project completion date will be upon certification of the June 6, 2006, primary election.

The Voter Verified Paper Audit Trail requirements...
will be fulfilled with this system as the AVC Edge units being purchased by Del Norte include VeriVote printers, which are a VVPAT component.

Del Norte County Project Documentation Plan meets all the requirements for completeness. The Sequoia AVC Edge units, the VeriVote printers, and the Optech Insight units are certified for use in California.

Please note, as you knew in the previous discussion -- please note that the software used to run the AVC Edge units currently has a condition on the certification for its use, as the system cannot be used in a California primary election. This condition is expected to be resolved before the end of the year.

Del Norte County currently uses the Datavote punch card voting system. Del Norte County considered only DRE units for their polling places and optical scan for their absentee and vote-by-mail ballots, as the county believes that it is preferable to have all the votes cast on the ballots on the same equipment in the polling place. The county believes that the new DRE technology will provide a simplified voting experience and increase accessibility and independence for voters with specific needs. In addition, the new DRE system will reduce the burden on poll workers and assist in removing the potential for voter error and ambiguity that is possible.
with the punch card ballots.

Del Norte County will not implement the new system until the June 6th primary. And this will allow the county ample time for testing the new equipment and training staff and poll workers on the new system.

Del Norte County will only receive VMB payments once they have submitted invoices for the purchase of their voting equipment.

I also wanted to note that on August 3rd, 2005, the Secretary of State issued a directive to the counties requiring that certain language be included in any contract between a county and a voting system vendor. The language requires the vendor to be responsible for the cost of any upgrades, retrofits or replacement of any voting system or its component parts that is necessary to bring the system into compliance with federal and state law.

The contract that was executed between Del Norte County and Sequoia on August 11th, shortly after the directive was issued, does not conform to this directive. However, nothing in Proposition 41 or the Funding Application and Procedural Guide, adopted by the Board, would prohibit the Board from approving Del Norte County's Project Documentation Plan based on noncompliance with the Secretary of State's directive.
It is the staff recommendation that Del Norte County's Project Documentation Plan be approved and a Funding Award letter be issued in the amount of $164,420.41.

I do know there is some comments on this. And there's a person from our Executive Office, Chris Reynolds, who'd like to come forward and talk about the Secretary of State's directive.

CHAIRPERSON PÉREZ: Okay. Why don't we have Bruce come forward first. And then I'd like to have representatives from Del Norte County come forward.

I don't have any cards on this though.

MS. LEAN: I'm sorry, I didn't give you a card. There is one for Chris Reynolds actually.

CHAIRPERSON PÉREZ: Chris Reynolds.

MR. REYNOLDS: Good afternoon. Thank you for the opportunity to address you on this issue. As staff told the VMB, on August 3rd, 2005, the Secretary of State's Office did issue a HAVA compliance notice to counties and voting system vendors that articulated specific language to be added to contracts, agreements and voting system certification documents. The language provides that the vendors seeking certification and funding would need to affirmatively state that the voting system they are selling complies with HAVA, the Help America Vote Act of
The language further provides that should a system be found to be out of compliance, the vendor accepts the responsibility to pay the costs of upgrading the system to achieve compliance.

The intent behind the language is to ensure that the burden for HAVA compliance is equitably distributed. The Secretary of State's Office believe that vendors are providing a product primarily for the purpose of meeting new voting system standards. They are being compensated with public funds for that product which they designed to build. And we believe that the language that we're recommending be included in contracts and certification documents -- we're requiring be added to those documents is essentially a declaration of those facts.

On August 3rd, the directive was issued by the Secretary of State. On August 11th, the contract between Del Norte and Sequoia Voting Systems, which is the basis for the Prop 41 funding allocation request, was executed. We're requesting that the VMB request an amendment to the contract to include the appropriate language. And prior to the meeting's start I had provided that. And I have copies if you can't find it.

It could be argued that the Prop 41 process is

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separate from HAVA. But we believe that the two are
inextricably linked. Counties, for instance, are using
HAVA funds as a Prop 41 match. The two processes for the
sake of consistency and efficient use of taxpayer funds
should work in concert, especially because counties may
seek funding from both state and federal sources to pay
for upgrades for a single voting system.

The federal standard preempts state autonomy in
voting system certification by creating minimum standards.
All voting systems now, regardless of the source of
funding, must meet those minimum federal standards.

The Del Norte contract includes a provision that
specifies that, quote, the software upgrades and firmware
comply with applicable laws in effect at the time the
agreement was executed. You'll find that in Section 4d.

This is arguably a substitute for the notice
language. But we believe it's in the best interests of
the public to be consistent and that in any case adding
specific language of the notice to this contract should it
be found to be a substitute is immaterial since they both
mean the same thing.

We do not want the VMB to reject this
application, but we do urge the Board to adopt it
conditioned upon an amendment to the contract.

With that, I can answer any questions that the
Board might have.

BOARD MEMBER PINNEY: I'd like to here from the vendor.

CHAIRPERSON PÉREZ: Is anybody here from Sequoia?

VICE CHAIRPERSON KAUFMAN: Actually before --

CHAIRPERSON PÉREZ: Just identify if you're here.

VICE CHAIRPERSON KAUFMAN: Before you go, I did have one question. And maybe this is for the vendor as well.

In Section 4d does the term "firmware" -- well, does software upgrades and firmware include the whole product that's being provided to the county? I mean does that encompass everything? And if it doesn't, I guess I'd like to hear what it doesn't encompass.

And, Chris, either you can answer that or a representative --

CHAIRPERSON PÉREZ: Well, Bruce could answer it too, because I think we're talking about a term of art that --

BOARD MEMBER PINNEY: What is firmware?

CHAIRPERSON PÉREZ: -- also falls before you.

MR. McDANNOLD: Firmware is the --

CHAIRPERSON PÉREZ: If the language that we're looking at addressing is with respect to software and firmware, what does that not include?
MR. McDANNOLD: That does not include the hardware itself, the physical machines and devices.

CHAIRPERSON PÉREZ: Including the printers and --

BOARD MEMBER FINNEY: So it's the guts of the machine but not the machine itself? It's like furniture in a condo.

MR. McDANNOLD: Hardware and firmware are the programing instructions that operate the machine, but not the physical devices.

VICE CHAIRPERSON KAUFMAN: When you're talking about certifying a system, is it the firmware that's being certified or --

MR. McDANNOLD: We certify the hardware, the firmware part of the system -- the hardware, the firmware, the software, the documentation around it including the use procedures for using the system.

BOARD MEMBER FINNEY: So it includes the hardware?

MR. McDANNOLD: Yes.

VICE CHAIRPERSON KAUFMAN: Certification --

BOARD MEMBER FINNEY: Certification, right, of course.

CHAIRPERSON PÉREZ: Here's what I'd like to do actually, if it meets with everybody's approval. I'd like to have the representative from Del Norte come forward and
then the representatives from Sequoia come forward just to
make any statements they'd like to make. And that way we
will have heard from all of them before we continue on
with our questioning.

So who is here on behalf of Del Norte County?

And my first question for you after you identify
yourself is: Is it Del Norte, Del Norte or Del Norte?

MS. FRAISER: Hi. Thank you.

My name's Vicki Fraiser from Del Norte County.

And it is Del Norte.

And I had a concern when I received the directive
from the Secretary of State because I noticed in my
contract that I had already signed didn't have and it
didn't meet the criteria that he had issued. Chris called
me Wednesday night and discussed what him and Sequoia were
going over. And I was fine with it if the language could
be changed.

My problem is Del Norte is a very small county.

When you're looking at me, you're looking at the county
recorder, you're looking at the county clerk, you're
looking at the county registrar of voters and the public
administrator with three people in my office.

It's a real challenge to do anything and get
anything done and get things before the Board with no
money up there.
I wouldn't mind working with Sequoia to meet some -- maybe half and half. But I would really like to have that amended if at all possible.

CHAIRPERSON PÉREZ: You'd like the amendment?

MS. FRAISER: Yes.

CHAIRPERSON PÉREZ: Very good. Thank you.

MR. CHARLES: Good afternoon, Mr. Chairman and members of the Board. Alfie Charles with Sequoia Voting Systems.

And our concern with the language as it was drafted by the Secretary of State is that it's extremely open-ended. And when we provide a system and we price something so that it's competitive in the state, it's based on what we understand the laws to be, what we understand the requirements to be at the time.

The initial language from the secretary was open-ended to the point that any future changes in law would -- the cost for those amendments would be borne by us in a model that we hadn't anticipated.

We have no problem agreeing that what we submit is compliant under HAVA regulations that our known to us at the time, that are definitively addressed in some formal way. But our concern is if future court process or future regulatory process imposes regulations that we're not aware of, that have substantial costs to us, we
haven't priced that into the product. So to do that would require a dramatic change in pricing structure in the State of California, which would be difficult for us to determine.

But I think what we would like to do is work with the Secretary of State on mutually agreeable language so that it's clear that the Secretary's order and the contract language we accept is for requirements in place and known to us at the time and not something that can be revised by a future act of the courts or the Legislature, because we simply haven't -- we don't have a way to know what this is and to know what that unknown future liability would be, which potentially could be due to the unilateral act of a government entity. I mean we can't sell something to someone and have them come back and say, "Our interpretation of this existing law is that you owe us twice as many printers," or whatever that may be.

We will, however, and we do, include in all of our contracts language that software upgrades -- as laws are changed and software upgrades are available, we provide that as part of the license agreement. When it comes to fixed costs like hardware, then it becomes a much more difficult item to accept.

CHAIRPERSON PÉREZ: Alfie, if you could stay with us for a few minutes, because I've got a couple questions,
and I think some of the others do. I'll ask them my way. Perhaps some of the attorneys on the panel would phrase them more elegantly. But the way I look at it, there's four sets of -- there's four sets of potential language here:

One is the language in the Secretary's directive on the 3rd. The second is the set of language presented here for amendment into 4d which talks about software and firmware.

The third is some other language that addresses current federal and state requirements. And then the forth is what you offered just a minute ago, which is things that are known to you and are definitively expressed.

I'm comfortable with the first, second, and third. I'm not comfortable with this idea of you being able to unilaterally tell us what is going to you and what you interpret to be definitively expressed.

So my question is this: As it stands today, do you believe that the product that you are entering into this agreement with Del Norte County meets federal and state requirements as they exist today?

MR. CHARLES: Yes.

CHAIRPERSON PÉREZ: Mr. Kaufman.
BOARD MEMBER FINNEY: Into the mike.

VICE CHAIRPERSON KAUFMAN: Yeah, actually why don't you go ahead, Mike, and ask your question.

BOARD MEMBER BUSTAMANTE: Do you intend to -- going forward, do you intend to adhere to the Secretary of State's directive from August 3rd with future contracts, if any, that you enter into with counties?

MR. CHARLES: Well, we'd like to work with the state to find language that's acceptable. We cannot agree to language that creates an unknown, unlimited liability.

BOARD MEMBER BUSTAMANTE: So the answer is no?

MR. CHARLES: As expressed in that language of that press release that was issued, we cannot agree to those terms. However, I think the Secretary of State has offered some language that is -- it's much closer to being acceptable, which is laws that are in effect at the time. The only question that we have is: Does that address a future interpretation? I anticipate a whole lot of people getting sued over the next four years trying to understand what HAVA means.

We cannot accept a liability that we don't understand.

CHAIRPERSON PÉREZ: But you'd want the counties to accept that liability?

MR. CHARLES: No, I think that it would be
helpful if government would interpret the laws and tell us what they mean. We can -- we sell a voting system, and we sell a system that is compliant with everything that we know it to be -- what the law's to be today.

If those laws change -- just, for example, if the State of California requires a voter verifiable printer that they didn't require two years ago, is that something that under this directive we would be expected to pay for that we hadn't anticipated at the time initial contracts were signed?

VICE CHAIRPERSON KAUFMAN: But isn't there a difference between a new requirement that gets adopted afterwards versus an interpretation of a requirement that clarifies what exactly is required under something that existed at the time the contract was entered into?

MR. CHARLES: Ideally if we all knew exactly what the interpretation was -- I think there are a lot of people that -- ourselves included, we think we understand what HAVA says. That doesn't mean that a court two years from now is going to agree with what he and the counties think it says.

And I don't want to be in the position where a county or a state gets sued and because they know that there's an unlimited ability for them to accept whatever they want because someone else is on the hook for it,
that's not a tenable business model for anybody, ourselves
or any of our competitors.

BOARD MEMBER FINNEY: There is something here --
this is kind of an age-old question. This is like the
munitions manufacturers, you know, defending the country
by making bombs. They use perchlorate. Twenty, thirty
years late we discover that's an environmental hazard.
They're all brought back into courts. Typically it's the
third branch of government that addresses these issues.

It's interesting, because a week and a half --
oh, no, next week -- actually next Friday in Los Angeles
we're having a forum with all the top law schools around
the country on the justice system, and maybe how there
could be preventative justice in the same way as there's
preventative medicine. You pay a dollar now, you save
three on the back end. This begs that question actually
in a business setting. And in a way it's very unfair to
ask of a corporate entity, a business entity to anticipate
what government is going to do, when, quite frankly, we've
been sitting here for two years because we didn't know
what government was ultimately going to do.

So I understand where they're coming from. At
the same time, I think what Mr. Kaufman's getting at --
and I wanted to say -- my question was: What's it all
about? But I'll hold off.
I think what Mr. Kaufman's question went to is more specific to the circumstances in which we find ourselves right now. Meaning that there's this moving target. You heard us -- you've been here this whole session and you've heard us --

CHAIRPERSON PÉREZ: Been here a lot longer than that.

BOARD MEMBER FINNEY: Exactly.

-- wrestling with this notion now, since we were assigned to this Board and then kept on this Board by the next Governor a couple years ago, wrestling with this question of exactly what is certification, when's it going to happen? We're wrestling with the same questions. So I can see the balancing act that we're trying to wrestle with here.

Mr. Kaufman's point is very valid in that we are kind of close to the finish line, if you'll have it, on this certification issue. As I understand it, you guys are up for certification like now and might have it by -- we were given an update. What was -- you said December?

VICE CHAIRPERSON KAUFMAN: Software --

MR. CHARLES: Before the end of the year.

BOARD MEMBER FINNEY: Yeah, possibly by the end.

And so we're real close. So -- and then --

CHAIRPERSON PÉREZ: They're already certified for
everything but the primaries.

BOARD MEMBER FINNEY: -- but the primaries,
exactly.

And so I understand where they're coming from,
and maybe the language is too broad.

CHAIRPERSON PÉREZ: And here's -- because I
understand the concern that you expressed with respect to
the initial language and whether it was overly broad. And
that's why I raised the question with respect to your
statements about "known to us" and "definitively
expressed," because I think that's overly narrow.

And I think that Mr. Kaufman and I asked the same
question from two different ways, which is the question
of, not new sets of expectations that are later imposed,
but -- your statement that you said not wanting to assume
liability, for example, if a court were to interpret the
contract differently. Well, that's, quite frankly, what
courts do. And so I asked the initial question to get at
the heart of this, which is whether or not you believe
that the system you're putting forward meets federal and
state laws. You said it does.

So I'd be comfortable if you came back after
further discussions with the Secretary of State with
language that wasn't brought to the extent that it opens
you to unknown sets of potential further challenges, but
it was also -- well, we'll get Mr. Garamendi in here to
talk about that in a minute -- but that also protects the
counties and, quite frankly, the public from you saying,
"Well, even though that was already in law, even though
that was already in regulation, that wasn't how we
interpreted it. Therefore, we have no obligation along
those lines."

So my question at this point is: As you're
moving forward in this effort to clarify or to correct any
concerns with respect to your software for California
primaries, what is the harm in us putting this off to a
future meeting to allow you to continue in discussions
with the Secretary of State to address this language at
the same time as you address the issues that need to be
addressed with respect to primary elections? And then I'd
also like to hear Del Norte County's response to that same
question.

MR. CHARLES: And probably their answer is more
relevant than mine, because they have equipment that they
need to receive and prepare for and everything else.

I would be comfortable with a condition I think
that the Secretary of State's Office pretty -- essentially
said, which is approve their application pending the
revision to the contract to language that's mutually
acceptable to the state and to the vendor. And I don't
think that we're the only vendor that would need to be involved in that discussion. I think everybody will have to have the same language.

BOARD MEMBER FINNEY: Absolutely, right.

And then the question goes to the nature of the language. I mean there's time certain that can be attached to the provision. There's -- I mean there's different, ways I think -- I do think it's possible to tweak the language to make it more, I would hope, amenable to what we'll call the industry, not just you guys.

But I actually support his suggestion that we consider, you know, approving subject to something along those lines. And then I think we should hear from Del Norte as well.

CHAIRPERSON PÉREZ: If you'd come back down please.

VICE CHAIRPERSON KAUFMAN: And I'll say it just while she's approaching.

I don't think it's within the purview of this Board to amend any contract by order of this Board anyway.

This is a contract between two parties.

CHAIRPERSON PÉREZ: Actually there's this little item that I found in the code that says that it is. But that's --

BOARD MEMBER FINNEY: Yes. I was going to agree
with the Chairman on that one, only because we have an
initiative charge that we have to fulfill. Which might
not necessarily require us to get to the nitty-gritty of
the amended language, but does require us to have
certified equipment --

VICE CHAIRPERSON KAUFMAN: Well, that part I
agree. We have to have certified equipment. But I don't
know that we can just unilaterally place language in the
contract --

BOARD MEMBER PINNEY: -- yeah, I wasn't
suggesting that.

VICE CHAIRPERSON KAUFMAN: -- that supercedes
other --

CHAIRPERSON PÉREZ: No, we could -- we could
unilaterally reject a contract --

VICE CHAIRPERSON KAUFMAN: Absolutely.

CHAIRPERSON PÉREZ: -- consistent with 19235,
right?

BOARD MEMBER PINNEY: Yes, that's what we call
the --

CHAIRPERSON PÉREZ: Please.

MS. FRAISER: I'm not sure of the --

CHAIRPERSON PÉREZ: I guess the question is:

What's the harm -- I asked the question one way and Alfie
answered it a different way. I think my question was
initially: What's the harm us putting this off till the
next Board meeting and giving everybody time to tweak the
language. Alfie's response was that he'd be very
comfortable with us doing an approval contingent on the
resolution of this matter to the satisfaction of the three
parties, the Secretary of State, the county and the
vendor.

Board Member Finney: Are you comfortable --

Board Member Finney: Are you under a time
pressure right now?

Vice Chairperson Kaufman: So that you wouldn't
have to come back.

Chairperson Pérez: So that you wouldn't have to
come back.

Ms. Fraiser: Okay.

Board Member Finney: Well, what's your timeframe
and what's the pressure you're under at the county level?

Ms. Fraiser: Well, again, like I said -- and
Janice said I really sound loud -- my basic problem is I'm
the one that has to train the poll workers, I'm the one
that has to do everything. I'm the one that has to go
into training with Sequoia and still run the recorder's
office and the clerk's office and do my public
administrative function. So the time is very important to
me. I'd like to get this going as soon as I can.
CHAIRPERSON PÉREZ: But you're not going to do this training before the November special election, for example, correct?

MS. FRAISER: No, no --

CHAIRPERSON PÉREZ: Because you don't want to --

MS. FRAISER: -- no.

CHAIRPERSON PÉREZ: So between now and the November special election --

MS. FRAISER: And we're going to go ahead and be doing with us all working together. And I'm probably one of the counties that the language isn't going to really phase a lot, we're so small. But being how it's come up with me, I'd like to say it does -- the language does need to be tweaked.

CHAIRPERSON PÉREZ: Well, let me throw out this idea and see how folks feel about it. I mean I feel comfortable approving this contingent upon resolution of this specific element to the contract to the satisfaction of the Secretary of State's Office, the county and the vendor. However, I'm not comfortable making that an indefinite amount of time. We're now at September 23rd -- yeah, I was actually looking at giving -- but having that authorization sunset prior to our November 16th meeting so that if they weren't able to resolve this matter in a way that was to the satisfaction of the three parties, then
our authorization sunsets and they'd have to come back to
us again. If they were able to resolve it to the
satisfaction of the three parties, then they move forward
without having to come back to us.

VICE CHAIRPERSON KAUFMAN: I'm generally
comfortable with that. I was focused on our next meeting,
which is the October 17th meeting. I think conceptually
if we're going to do something contingent, then there
should be --

BOARD MEMBER PINNEY: -- time certain.
VICE CHAIRPERSON KAUFMAN: -- yeah, a time
certain to report back or, you know, then it goes forward.

CHAIRPERSON PÉREZ: Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: The Secretary of
State's Office. Are there any other contracts that have
been entered into between vendors and counties that meet
the Secretary of State's directive?

MS. LEAN: This is a brand new directive that
just came out. So this is the first contract that -- this
is the first contract that we've seen come before us that
had that issue.

CHAIRPERSON PÉREZ: Don't we have another --
VICE CHAIRPERSON KAUFMAN: It's not a DRE.
CHAIRPERSON PÉREZ: Oh, it's not a DRE.

BOARD MEMBER BUSTAMANTE: The second question
I --

MS. LEAN: And it was signed before the directive.

BOARD MEMBER BUSTAMANTE: The second question I have is: Does the Secretary of State's Office -- are they entertaining the idea of changing the directive? Because it sounds from Sequoia that this isn't just a one-time deal, that it's going to be in every contract going forward.

MR. REYNOLDS: Yeah, to clarify, we do expect -- we do understand the concerns of the vendors, the industry, if you will. It was not our intention that this language be open-ended. We understand there's a number of contingencies that you have to plan for and accommodate for in the policy, some of which Alfie articulated court interpretations. How do you balance a court interpretation that everyone, maybe but the person who brings the suit, considers a clarification declaratory of existing law; except that party who might be an industry party who says, "No, that's not the way to interpret it."

So there's a balance there that needs to be achieved. And we would like to have the time to achieve that balance. And we'd also like to prevail upon the Board, which we were going to do in some future time, to come back -- well, actually by the next meeting come back with
a policy where we can ask you, "Can you incorporate this, you know, requirement? Would you be willing to accommodate this requirement that" -- you know, we're talking about HAVA-compliant systems and so on and so forth.

And in the brief conversations that I've had with some people, they've raised some very good points about the fact that there's different kinds of voting system standards, for instance, that can be met in different ways. The one voting system standard is, "Can I detect an error in my ballot?" That could be met with a voter education program. The other component is a disabled access, which certainly has to be met with some kind of a technological solution.

So there's different things that need to be incorporated into that policy. And it's our intention to try to bring something back to you at your next Board meeting.

CHAIRPERSON PÉREZ: Well, in an effort to move us along, do any of the three of you have an objection to my inclination, which is to approve, contingent upon amendments that satisfy each of the three parties that you represent, and that approval sunsetting prior -- sunsetting on November 15th, so that if you have not resolved that by November 15th, you've lost your approval from us and you'd
have to come back to us new?

MR. REYNOLDS: For the Secretary of State, that's a great solution to this dilemma.

MS. FRAISER: Del Norte agrees with that.

MR. CHARLES: We're fine with it. And hopefully we can do it within the next week. So --

BOARD MEMBER FINNEY: We anticipate --

CHAIRPERSON PÉREZ: The sooner, the better for us.

BOARD MEMBER FINNEY: Do you anticipate your counsel at Sequoia filing a declaratory relief action as soon as we take action?

(Laughter.)

BOARD MEMBER FINNEY: I'm just asking with a lawyer's hat on to see if we can secure our legal fees in advance.

I mean the point I'm trying to make kind of jokingly here is that, you know, in the same way that it's not really our purview I think to try to draft specific language that could go into the amendment of a contract, I would also assume that for the Secretary's part, while we can make recommendations to a particular local government entity to try to embrace certain policies, the nitty-gritty of the legal language, I would hope we can kind of figure out to the best of our abilities so that it
MR. REYNOLDS: We understand that the contract --
the parties to the contract are the county and the vendor.
You're absolutely right. That's why I -- maybe I didn't
emphasize it enough. But it was a request to the Voting
Modernization Board to request the parties to make an
amendment to the contract.

BOARD MEMBER FINNEY: And then eventually discuss
policy -- some type of policy being adopted and
implemented.

MR. REYNOLDS: And then that would enable the
Board as a policy adopted to hold these future proceedings
or decisions to some kind of a standard that --

BOARD MEMBER FINNEY: Right. Well, Mr. --

CHAIRPERSON PÉREZ: Mr. Bustamante.

BOARD MEMBER BUSTAMANTE: Yes. Would you refresh
my memory with regard to funding of counties and compliant
and non-compliant equipment. I mean if the system is,
quote, technically not compliant, do we still fund the
counties or do we --

BOARD MEMBER FINNEY: Or have we still funded the
counties is the question.

BOARD MEMBER BUSTAMANTE: Or do we wait -- we
talked about this one time at great length and --

BOARD MEMBER FINNEY: It's been awhile.
CHAIRPERSON PÉREZ: I think we last spoke about it with respect to the TSX, right?

BOARD MEMBER BUSTAMANTE: And I just don't remember where -- what --

BOARD MEMBER FINNEY: Do you guys recall?

MS. LEAN: You're only allowed to fund certified systems.

BOARD MEMBER BUSTAMANTE: So the answer's they wouldn't receive any funding until the Secretary of State's Office --

BOARD MEMBER FINNEY: Didn't we do some where it was contingent upon certification? I seem to remember us --

CHAIRPERSON PÉREZ: Well, but in this case we have what's been represented to us as a certified system, but there's a condition with respect to its application to primary elections, which, quite frankly, makes me very uncomfortable because of the experience we did have with other systems.

BOARD MEMBER FINNEY: Right, as to the absence of --

BOARD MEMBER BUSTAMANTE: Is it considered a certified system, even though that there were --

BOARD MEMBER FINNEY: Yeah, it's certified but not for primaries.
VICE CHAIRPERSON KAUFMAN: It's certified, but subject to contingency on the software for the primaries.

CHAIRPERSON PÉREZ: Mr. McDannold, do you agree with our --

MR. McDANNOLD: Yes.

BOARD MEMBER BUSTAMANTE: It is certified?

MR. McDANNOLD: Yes.

BOARD MEMBER BUSTAMANTE: So, therefore, funding would be made available?

MR. REYNOLDS: The other complication that I was trying to identify --

BOARD MEMBER BUSTAMANTE: Whoa. Wait. Just answer that question first. It is certified and so, therefore, funding would be made available under Prop 41?

BOARD MEMBER FINNEY: Well, it's conditionally certified.

MS. LEAN: No, it's -- it's a certified system according to how we interpret certification.

BOARD MEMBER BUSTAMANTE: So the answer's yes?

MS. LEAN: That's correct.

MR. REYNOLDS: And what I was trying to identify is the fact that HAVA even anticipates that there are different voting system standards that need to be met in different ways. Again, in the case of a person who's got to be able to detect an over-vote or find an error in
their ballot, you can meet that condition with a voter education program. As was mentioned earlier, there's a grandfathering that's been articulated by the Secretary of State, which says, in essence, if you have a certified system and you have experience with it, it's okay. It's a system that you can use. And, again, to meet that requirement for detecting an error in your ballot, like an over-vote, you can use a voter education program. But there are other voting system standards in HAVA that deal with disability access. Now, in order to make some -- a system be able to meet that requirement, you're really going to need --

CHAIRPERSON PÉREZ: Chris, I'm going to cut you off there because actually you're -- while it's a helpful explanation, it doesn't get to the specific issue that Mr. Bustamante is raising.

Let me ask you this question, Bruce: What timeline do you anticipate result -- what timeline do you anticipate result in the issue with respect to the software and its ability to be utilized in California primary elections? And, second, what makes you come up with that timeline?

MR. McDANNOLD: The vendor has told us that they anticipate coming forward with revised software that resolves that issue December of this year. So we're
totally dependent on the vendor completing their software and going through the federal -- completing the federal testing process and qualification process by that deadline.

BOARD MEMBER FINNEY: Welcome to the team.

VICE CHAIRPERSON KAUFMAN: Yeah, we've approved other funding for counties in the same situation.

BOARD MEMBER FINNEY: We have. I recall that we have.

MS. LEAN: Yes.

VICE CHAIRPERSON KAUFMAN: We have?

BOARD MEMBER FINNEY: We have, yes.

CHAIRPERSON PÉREZ: And we did it with some trepidation, but we did do it.

So I'd like to see if somebody would make my motion.

VICE CHAIRPERSON KAUFMAN: You want to give --

BOARD MEMBER FINNEY: I'm trying to remember --

VICE CHAIRPERSON KAUFMAN: The Chair entertains a motion to -- the Chair entertains a motion to accept the staff recommendation contingent upon resolution of items referenced in Section 4d of the contract to the satisfaction of the representatives of Del Norte County Sequoia, and the Secretary of State's Office. Such authorization sunsets November 15th of this year. If the
three parties cannot reach resolution -- failure to reach resolution would require the county to come back before our Board again should they want to avail themselves of Prop 41 monies.

Would anybody like to make that motion?

VICE CHAIRPERSON KAUFMAN: I'll make the motion.
BOARD MEMBER GUARDINO: I'll second that motion.
CHAIRPERSON PÉREZ: Thank you.

On the motion, if you'd call the roll please.

MS. MONTGOMERY: John Perez?
CHAIRPERSON PÉREZ: Aye.
MS. MONTGOMERY: Stephen Kaufman?
VICE CHAIRPERSON KAUFMAN: Aye.
MS. MONTGOMERY: Michael Bustamante?
CHAIRPERSON PÉREZ: We'll skip Mr. Bustamante and come back to him.

MS. MONTGOMERY: Okay. Tal Finney?
BOARD MEMBER FINNEY: I'm going to abstain.
MS. MONTGOMERY: Carl Guardino?
BOARD MEMBER GUARDINO: Aye.
CHAIRPERSON PÉREZ: Mr. Bustamante?
BOARD MEMBER BUSTAMANTE: Aye --

VICE CHAIRPERSON KAUFMAN: Reluctant aye.
BOARD MEMBER BUSTAMANTE: -- reluctantly.
BOARD MEMBER GUARDINO: Mr. Chairman, with
apologies, I have to sign off and get back into a board meeting that I'm at down here in Silicon Valley, unless you need me on the next vote.

CHAIRPERSON PÉREZ: No, I think we'll be okay.

Thank you Mr. Guardino.

BOARD MEMBER GUARDINO: Thank you, Mr. Chairman.

CHAIRPERSON PÉREZ: Okay. Very good.

Item 6b, Solano County.

MS. LEAN: Can I ask one clarifying question? Upon authorizing this approval, you sign a funding award letter. Would you like to sign that letter with conditions added to it? Would you --

CHAIRPERSON PÉREZ: No, I won't sign the letter until the item's been resolved.

MS. LEAN: Okay. Thank you, sir.

BOARD MEMBER FINNEY: And I think it would be helpful, Mr. Chairman, if we could have the Secretary's Office, its legal team really flesh out this item with respect to a broader policy if we're going to make a broad policy recommendation; if their counsel can maybe prepare a report for us on what they think the legal ramifications are of our decision today and if we were to adopt a policy along those lines.

VICE CHAIRPERSON KAUFMAN: Are you talking about the policy with respect to the language of the contract
or --

BOARD MEMBER FINNEY: Yes.

VICE CHAIRPERSON KAUFMAN: -- not with respect to this certification subject to contingency?

We're on the new issue.

BOARD MEMBER FINNEY: The first issue was the one we just struggled with. We haven't really moved on to the next issue.

The question is, you know, we really need to flesh out all questions of immunity as well as all questions that relate to the ability to -- you know, why -- the company's perspective can be everything from commerce clause violations to -- I'm not sure about this. It depends on how the language is drafted is what I want to get at. So I think rather than just take a letter that we're going to look at, just heard about for the first time today, you know, I think we need a real fleshed out legal analysis on the different directions that, you know, a company and/or county could go and where we think we'd end up in law.

CHAIRPERSON PÉREZ: Very good.

VICE CHAIRPERSON KAUFMAN: It seems to me just -- before we bury this horse.

I mean it seems to me that practically speaking until this issue is resolved, we're not going to be able
to have any more counties come before us for approval
because this is going to affect essentially every contract
that's going to be entered into from this point forward.

BOARD MEMBER FINNEY: And we have a meeting in
October. And I'm hoping that, you know, we could get some
type of report for October so that we can, you know,
address this as soon as possible.

CHAIRPERSON PÉREZ: Very good.

BOARD MEMBER BUSTAMANTE: Anyhow, for the record,
my issue wasn't the first, but my issue is still the
second one.

CHAIRPERSON PÉREZ: No -- and I appreciate that,
Mr. Bustamante. I actually share your trepidation, and I
think -- you know, I --

BOARD MEMBER FINNEY: Well, should we address
that now?

CHAIRPERSON PÉREZ: Let's do this: Let's move on
to Item 6b, let's flag this for a full discussion at our
October meeting.

BOARD MEMBER FINNEY: The second issue?

CHAIRPERSON PÉREZ: The second issue.

BOARD MEMBER FINNEY: Do you know what the second
issue --

CHAIRPERSON PÉREZ: And is everybody clear what
we mean by the second issue?
Okay. Very good.

Item 6b, Solano County.

MS. LEAN: Solano County has submitted a five-year documentation in phases. The Phase 1 Project Documentation Plan, what they're planning to purchase is the ES&S precinct ballot counters, 225 units; and the ES&S high speed central count -- ballot counters, 2 units.

Solano County has secured a Phase 1 voting equipment, and this new equipment will be used during -- or was used during the November 2nd, 2004, general election.

The phase 1 voting system was fully implemented, as I said, during the November 2nd, 2004, general election, and they propose a Phase 2 voting system to be implemented during the June 2006 primary.

This current system for Phase 1, the VVPAT does not apply to Solano County's Phase 1 Project Documentation Plan, as the system is a paper-based optical scan voting system.

Solano County's Phase 1 Project Documentation Plan meets the requirements for completeness. The ES&S Model 100 and 650 optical scan voting systems are certified for use in California.

At the March 19th, 2003, meeting of the VMB Solano County came forward with their Project
Documentation Plan to modernize their voting equipment
from the decertified Votomatic punch card voting system to
the Diebold AccuVote touch screen system. The VMB
approved Solano County's Project Documentation Plan and
issued a funding award letter to Solano County for its
entire approved formula allocation of $2,297,314.22.
Solano County did not submit invoices to be reimbursed for
this equipment and was never issued any funds for the
approved project.
Solano County used the AccuVote TS units in the
November -- sorry -- in the March 2004 Presidential
Primary Election. However, in April of 2004, the
Secretary of State decertified the use of the AccuVote TS
units. This decertification motivated Solano County Board
of Supervisors to direct the election personnel to replace
the touch screen units with the ES&S optical scan system
in May of 2004.
Solano County acquired their new ES&S optical
scan system in September of 2004 and began using their
equipment during the November 2004 Presidential General
Election. The county made enhanced poll worker training
materials to assist with the transition to the new voting
equipment -- optical scan voting system. Solano County
set up demonstrations and distributed education material
on how to use the new system at a variety of venues to
introduce this new optical scan technology. Of Solano County surveyed voters and pole workers on the new system, the results showed an overall satisfaction with the new optical scan voting system.

Solano County's Phase 1 optical scan equipment does not fully address the new state and federal requirements for accessibility. To fully comply with state and federal law, Solano County plans to incorporate a Phase 2 into their overall plan and intends to purchase one accessible unit for each of their polling places.

While Solano County's Phase 1 voting system appears to meet the requirements for reimbursement under Proposition 41, it should be noted that any money allocated for this system would reduce the amount of money the county will have to purchase accessible voting equipment during their second phase; and that a Phase 2 Project Documentation Plan will need to be submitted once the county begins receiving their Phase 2 accessible units.

Solano County will only receive VMB payments once they have submitted detailed invoices for Phase 1 of their -- for their Phase 1 voting equipment.

Please note that the staff proposed Phase 1 funding award is based upon allowable reimbursement under Proposition 41 for voting equipment hardware and software.
The Election Support Service listed in Solano County's contract with ES&S would not be covered as a reimbursable claim under Proposition 41.

With this, it is our staff recommendation that Solano County's Phase 1 Project Documentation Plan be approved and a funding award letter be issued in the amount of $1,318,533.

Any questions?

CHAIRPERSON PÉREZ: Mr. Kaufman.

VICE CHAIRPERSON KAUFMAN: Yeah, I had one question. And -- first of all, I just wanted to say I think Solano County's to be commended to look at their situation, pull an audible and change systems in order to get the voters what they need.

I have one concern legal -- and I'm going to sound like Mr. Finney on this --

(Laughter.)

VICE CHAIRPERSON KAUFMAN: -- and just wanted to ask staff or counsel. Because I don't think we've had a situation where we've had somebody come back to us -- after we've awarded funding and then come back to us with a new request for funding for a new system. And I note in the measure and in the Election Code Section 19234(c)(3) it says one of the conditions for awarding money is the county has not previously requested fund money for the
purchase of a new voting system.

And I guess I'm just wondering whether that's been interpreted to mean they've actually requested the funding in the form of submitting invoices as opposed to submitting Project Documentation Plan approval to us and we've -- we've issued an award based on that. And that was my only concern, whether we would somehow be running afoul of the statute in making this award.

MS. LEAN: Can I give you a staff opinion, then I'll turn over to our legal?

VICE CHAIRPERSON KAUFMAN: Sure.

MS. LEAN: When they resubmitted their application of the project documentation, it was under a caveat under the Funding Application Procedural Guide we allowed them to amend their plan. And since they never received any funding -- that was why it was pointed out in the staff report that they were issued a funding award but they never actually submitted any invoices or received any of the funding. So their project plan actually substantially changed, because they got totally different equipment.

So there is a caveat in the application package that allows for that.

CHAIRPERSON PÉREZ: So, again, given that, you interpreted it as being a modification of the initial?
MS. LEAN: (Nods head.)

VICE CHAIRPERSON KAUFMAN: Of the initial request.

MS. LEAN: Correct.

VICE CHAIRPERSON KAUFMAN: Okay. Because the statute does refer to requesting funding, not awarding or receiving funding.

STAFF COUNSEL KANOTZ: Michael Kanotz, Staff Counsel.

I think another thing to keep in mind here is when we're talking about the eligibility provision, that does not take into account the -- although I think the procedures the Board have adopted are certainly consistent with that provision, it does not take into account those procedures. So when we have a situation where an application is made personally to procedures that were adopted by the Board, I don't think that necessarily equals a request for fund money under the code section. And it seems to me in this case if what is being amended is the original plan that was submitted, in other words we had approval for this plan but before we actually submit the invoices for the funds, we're changing our mind and amending the plan and bringing it back to the Board, it doesn't seem to me that in that instance this provision
would render a county ineligible for the funds.

VICE CHAIRPERSON KAUFMAN: My concern is simply that we've considered this issue and that we feel that it is appropriate and legal under the provisions of the statute. And if that's what I'm getting, then I'm satisfied with that. I just want to make sure we've thought about it.

CHAIRPERSON PÉREZ: And I just want to draw everybody's attention at the same time to the next item on our agenda, which also relates to the same section but in a much broader sense than the discussion of this modification.

Any other questions?

BOARD MEMBER BUSTAMANTE: Move the staff recommendation.

CHAIRPERSON PÉREZ: Mr. Bustamante moves.

VICE CHAIRPERSON KAUFMAN: I'll second.

CHAIRPERSON PÉREZ: Mr. Kaufman seconds.

MS. MONTGOMERY: Roll call?

CHAIRPERSON PÉREZ: If you would.

MS. MONTGOMERY: John Perez?

CHAIRPERSON PÉREZ: Aye.

MS. MONTGOMERY: Stephen Kaufman?

VICE CHAIRPERSON KAUFMAN: Aye.

MS. MONTGOMERY: Michael Bustamante?
BOARD MEMBER BUSTAMANTE: Aye.

MS. MONTGOMERY: Tal Finney?

BOARD MEMBER FINNEY: Aye.

CHAIRPERSON PÉREZ: Very good.

MS. MONTGOMERY: Carl Guardino's out.

CHAIRPERSON PÉREZ: Okay. Item 7a -- 7a is a VMB policy question about what constitutes an expansion of an existing system or components related to a previously approved application. And we're going to have a little bit of a legal discussion.

I just want to draw everybody's attention to the fact that it's now 3:30. At just about 4 o'clock I'm going to need to leave. Mr. Kaufman will Chair the balance of the meeting at that point. And he's going to need to leave soon thereafter himself. So hopefully we can get through this item as quickly as possible.

Jana, do you want to start us off or is Michael going to walk us through this discussion?

MS. LEAN: I'll start the discussion.

A policy question came up. It specifically -- it's a question we wanted to raise as a general policy question to the Board. It did -- it was raised because of a request to review a letter from Santa Barbara County that's also in your packet.

But what the basic policy question is is what
constitutes an expansion of an existing system or components related to a previously approved application?

For example, if the county has received approval on a Project Documentation Plan and was issued a funding award allocation and was reimbursed for that voting equipment secured under that plan, and if the county's current voting system is still certified for use in California, can the county be reimbursed for a new voting system if they want to replace the voting system identified in their original Project Documentation Plan?

BOARD MEMBER FINNEY: So as if Solano had actually spent the money?

MS. LEAN: Correct.

Election Code section 19234 was enacted upon the passage of Proposition 41. Proposition 41 established the criteria for eligibility for counties to apply for the voting modernization fund monies. And it's listed here in your county what those provisions are.

Under the Proposition 41 the VMB was given the authority to reject any applications for fund money if deemed inappropriate, excessive, it did not comply with this article or intent. This is something you were discussing earlier. And the proposition further states that a county whose application is rejected shall be allowed to submit an amended application.
I will turn over the legal interpretation of 19234(c)(3) to our new staff attorney.

STAFF COUNSEL KANOTZ: I'll just go ahead and continue on with the report from there.

Section 19234(c)(3) of the Elections Code provides that a county is ineligible to receive funds if it has previously requested Proposition 41 funds for the purchase of a new voting system, unless the application is for an expansion of an existing system or for the purchase of components related to a previously approved application. Therefore, a county that has previously received Proposition 41 funds for a new voting system may not receive additional funds to replace that system, meaning the system that was purchased with Proposition 41 funds. However, the county may receive additional -- may receive funds to add additional components to that system, as these would be considered components related to a previously approved application.

In addition, regardless of whether the county has previously applied for funds, it may receive Proposition 41 funds for the expansion of an existing system that was purchased by the county.

CHAIRPERSON PÉREZ: Not being burdened with a legal education --

(Laughter.)
BOARD MEMBER FINNEY: If this is for short phone
calls.

STAFF COUNSEL KANOTZ: The initiative very
broadly defines a voting system to mean any voting
machine, voting device or vote tabulating device that does
not utilize prescored punch card ballots. Over the last
portion is just limiting the type that's used.

So I think what --

CHAIRPERSON PÉREZ: But in that sense the system
can be a device as opposed to a network of devices,
correct?

STAFF COUNSEL KANOTZ: Correct.

CHAIRPERSON PÉREZ: So how do we get at -- how do
we get at the distinction between expanding the system
versus substantially changing the complement of devices
that you use?

STAFF COUNSEL KANOTZ: Well, it strikes me that
the eligibility provision here, first of all, states a
general rule, which in -- you know, you can put it in
colloquial terms by saying you only get one bite at the
apple, essentially. If you've previously requested --

CHAIRPERSON PÉREZ: What if you change the apple?

VICE CHAIRPERSON KAUFMAN: That's what just
happened.

CHAIRPERSON PÉREZ: No, I --
VICE CHAIRPERSON KAUFMAN: Before, I mean.

STAFF COUNSEL KANOTZ: But that general rule also has two, and I read as, mutually exclusive exceptions.

One, an application for an expansion of an existing system; or, two, components that are related to a previously approved application.

CHAIRPERSON PÉREZ: So then the question becomes what is -- you know, so if I bought a Diebold system and now there's not a system that's certified, and I wanted to actually become compliant with the law and actually run an election that served the purpose of the voters in my county, am I not allowed to put in new equipment that's actually compliant with the state and federal standards and come before this Board?

STAFF COUNSEL KANOTZ: Under the rule of eligibility, if you haven't previously requested funds under the initiative --

CHAIRPERSON PÉREZ: I guess the question, you know, in a very real term becomes if a county has done everything that they believed they should do to be compliant with the law, it actually in some ways gets at the issue that Alfie raised with respect to liability for unforeseen changes in the law, right?

So if a county purchased a system after the point in time in which we were eligible to reimburse them for a
portion of that acquisition, they did so in good faith to modernize their equipment, they did so in a way by purchasing a system or series of systems or complement of devices that were certified for use by both state and federal regs, and now the rules change, you know, their system is no longer certified, should there previous efforts to receive reimbursement completely consistent with the law preclude them from being able to avail themselves of further funding to actually comply with other elements of the law and afford the voters in their county the equipment that they need to be able to vote?

STAFF COUNSEL KANOTZ: Well, I think to some extent -- and to a large extent that's a policy question for the Board. But to the extent that it deals with the eligibility provision in this section of the Elections Code, it would depend on whether or not it could be characterized as an expansion of an existing system or a component related to a previously approved application.

CHAIRPERSON PÉREZ: And who is the arbiter of that definition?

STAFF COUNSEL KANOTZ: Well, it strikes me that the Bond Act, while containing -- while containing these eligibility provisions, it gives the Board authority to --

BOARD MEMBER FINNEY: I knew that was coming.

(Laughter.)
BOARD MEMBER FINNEY: Is Santa Barbara County here? I knew you all were here.

VICE CHAIRPERSON KAUFMAN: Just so I can have some context here. I mean we're talking about a county that comes back under Phase 1, there's an unused Phase 1 funding and they come back for more based on whatever expansion -- whatever that means -- in their voting system. And are we talking about, for example, the county that purchased DRE equipment that didn't have the audit capability and is now seeking to get additional funding to add on the audit?

CHAIRPERSON PÉREZ: That would -- that would clearly -- why don't we do this: We have a card in from Joe Holland from Santa Barbara. Why don't we ask him to come forward and kind of explain their dilemma to us, and maybe that will help.

BOARD MEMBER FINNEY: Is he coming with counsel?

MR. HOLLAND: Yes.

BOARD MEMBER FINNEY: So we can announce all --

CHAIRPERSON PÉREZ: You're welcome to bring up whoever you'd like to bring up.

BOARD MEMBER FINNEY: Is that our chief deputy here?

MR. HOLLAND: Good afternoon. I'm Joe Holland, Santa Barbara County Clerk, Recorder and Assessor and the...
Registrar of Voters. Mr. Lavayen is counsel with the county.

And what I'll do -- let me just kind of lay it out for you real quick. And then I'll have -- if you have questions of me, or Woody may be able to add something to it.

BOARD MEMBER FINNEY: Your other folks here are registrar folks or county counsel folks?

MR. HOLLAND: Bob Smith, Division Manager for our Elections Division; and Billie Alvarez, our HAVA Project Manager, who is actually --

BOARD MEMBER FINNEY: A lucky job.

MR. HOLLAND: -- doing the search on these systems and is very knowledgeable on -- about voting systems.

We purchased a Diebold optical scan system in December 1999. That system is currently not HAVA compliant, of course, and it does not meet the 2002 voting system standards that we're going to have to have in place by June the 2006.

So what we plan to do to -- we plan to meet the federal deadline for HAVA by January 1, 2006. We also want to upgrade our optical scan system to meet the 2002 voting system standards.

To become HAVA compliant what we want to do is
purchase the AutoMARK that is consistent and can only be used with ES&S optical scan system. The ES&S optical scan system, in our view, expands the scope of the existing Diebold optical scan system, as ES&S optical scan system does meet the 2002 voting system standards. The Diebold optical scan system right now does not have an option for us to be compliant with those.

So right now what we are seeing is you have ES&S optical scan, you have an AutoMARK. There is a solution for us right now to become HAVA compliant and to meet the 2002 voting system standards, what we can consider an expansion and an upgrade of our current system.

BOARD MEMBER FINNEY: And you'll continue to use the Diebold products for purposes of absentee and -- what was the other program?

MR. HOLLAND: The Vote Remote?

BOARD MEMBER FINNEY: Yeah.

MR. HOLLAND: Yes.

BOARD MEMBER FINNEY: So what they're doing, Mr. Chairman, is they're not -- they're not throwing away any of the equipment that they purchased through us. They are attempting to address an issue with which we continue to be plagued, issues of noncompliance with respect to the technology that's out there. And so they're claiming that it's an expansion of their system consistent with
increasing the size, extent, the scope and capabilities of
an existing system.

CHAIRPERSON PÉREZ:  Go ahead -- Mr. Bustamante,
go ahead.

BOARD MEMBER BUSTAMANTE:  When we allocated the
2.75 million to the county, what did it spend the money
on?

MR. HOLLAND:  We got reimbursement for the
Diebold optical scan system to the -- about a million
dollars.  So there's still 1.7 that's available for the
Phase 2.

BOARD MEMBER BUSTAMANTE:  Right.  But -- okay, so
you spent 1.7 on the Diebold reimbursement that you
purchased --

MR. HOLLAND:  One million.

BOARD MEMBER BUSTAMANTE:  -- oh, 1 million that
you purchased in '99?

MR. HOLLAND:  1999, right.

CHAIRPERSON PÉREZ:  Now, that Diebold system --
I'm not supposed to ask questions I don't want to know the
answers to, right?

(Laughter.)

VICE CHAIRPERSON KAUFMAN:  Depends on who you're
defending.

(Laughter.)

PETE SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON PÉREZ: Anybody else have any questions?

BOARD MEMBER FINNEY: Yeah, is Kris Daley doing well in her D.A.'s race?

MR. LAVAYEN: I haven't really heard. I think she --

MR. HOLLAND: I think she's the only one that's filed.

BOARD MEMBER FINNEY: That's what I heard.

That's why I asked it. I knew the answer before I asked it.

But having said that, I'd like to ask a question. At what point -- at what point did you become aware that you were going to have a timing issue with respect to the Diebold equipment?

MR. HOLLAND: A timing issue?

BOARD MEMBER FINNEY: Meaning that it might not become compliant in time for you to do what you need to do by your 2006 deadline.

MR. HOLLAND: Well, Billie Alvarez, our project manager, she's been looking at all the different systems. We actually -- she was actually running our -- a good portion of our elections with Bob Smith. And we took her off line, made her a project manager. She looked at all the different systems. And, you know, as it became
apparent that Diebold did not get certified for the touch screens and that they still don't have a solution for -- that we're aware of -- for upgrading our optical scan system to become 2002 compliant. So what we were looking at was an option of having -- keeping our current optical scan system and getting one touch screen with Diebold. They're not certified for their touch screens, and they don't have their optical scan systems ready for 2002 voting system standards, which is required by June 2006. And we don't even know what that would cost for us to do that upgrade.

BOARD MEMBER FINNEY: Right.

CHAIRPERSON PÉREZ: Well, let me ask the question I wasn't sure I wanted to ask anyway.

When you purchased the Diebold equipment in '99, how many units was that?

MR. HOLLAND: Two hundred twenty-one.

CHAIRPERSON PÉREZ: If you move forward as you anticipate attempting to move forward, how many of those 221 units are you going to continue to use?

MR. HOLLAND: Probably -- only some of them at our absentee counter. We'll keep a few of those, like six.

VICE CHAIRPERSON KAUFMAN: Just for my own education here. I mean what is it about the Diebold --
what is it about the system that you purchased that is not capable of being compliant? And how is the new optical scan system different from the one you purchased in terms of compliance? What is it about the two systems that, you know, enables you under a new system to be compliant through an optical scan when the old one doesn't?

CHAIRPERSON PÉREZ: And let's actually let Bruce take the first crack at that answer if you would, Bruce, and then come back to Santa Barbara.

MR. McDANNOLD: The existing Diebold optical scan system requires that the ballots be filled out by hand with a pen or pencil. The AutoMARK system has a voter -- the AutoMARK is a voter assist device that's electronic for those with visual impairment. It has an interface for people with physical disabilities to plug into. It's got an audio component for people who are blind to vote unassisted, as required by HAVA. And then it marks the ballot for them.

VICE CHAIRPERSON KAUFMAN: So it's a function of the accessibility issue that -- it's the accessibility point that's at issue, not --

MR. McDANNOLD: The AutoMARK provides the accessibility component of one device per polling place required under HAVA for people with disabilities to vote unassisted.
BOARD MEMBER FINNEY: That's the ES&S product is
the only one that can function in conjunction with the
AutoMARK, is that what -- that's their --

MR. McDANNOLD: That's the only system that the
AutoMARK has been certified to work with.

VICE CHAIRPERSON KAUFMAN: So is the point here
that it's kind of silly to have one kind of optical scan
machine in each precinct that is compliant while you have
other types of optical scan -- because we've seen a lot of
counties go to optical scan and then they put one DRE
machine -- or they want to put one DRE if they ever get
certified -- they want to put one DRE machine in a
precinct to meet the HAVA requirement but still have
optical scan for basically all the other voters. Is the
point here that it would be odd to have one kind of
optical scan machine in each precinct that's HAVA
compliant versus all the other noncompliant optical scan
machines?

MR. McDANNOLD: No, what I -- well, what I'm
hearing is they would be not deploying the Diebold
machines in the polling places --

BOARD MEMBER FINNEY: Well, yeah, it would be the
absentee, Steve.

MR. McDANNOLD: -- because they're two different
ballots. They're not compatible.
BOARD MEMBER FINNEY: It's just on the absentee
and the vote counting programs.

MR. McDANNOLD: So they would be taking their
remaining -- what I heard, was their remaining Diebold
machines or some of them using them to tabulate one form
of the ballot that's used only for absentees. They would
issue a different ballot, a completely different
technology for use in the polling places.

CHAIRPERSON PÉREZ: Well, let me take another
crack at the question that Mr. Kaufman's getting at.

How many polling locations do you have? Roughly
the two hundred and some?

MR. HOLLAND: One hundred seventy, plus or minus.

CHAIRPERSON PÉREZ: See, if you have 170, that's
why you have 221 Diebold machines now. If you go to the
ES&S, how many ES&S instruments are you looking at
acquiring?

MR. HOLLAND: They'll be one in each precinct.

CHAIRPERSON PÉREZ: Okay.

MR. HOLLAND: One in each polling place.

VICE CHAIRPERSON KAUFMAN: So there's only one.
CHAIRPERSON PÉREZ: So otherwise -- so, yes? The
answer is yes?

VICE CHAIRPERSON KAUFMAN: The answer is yes.

You are going to have only one in each precinct?
MR. HOLLAND: Right. But then the current ones that we have in house we cannot use.

CHAIRPERSON PÉREZ: No, no. The one per precinct actually helped clarify a question that was in the back of both Mr. Kaufman's and my minds about whether you could mix and match at locations. But when you're only looking at one device per polling location, it's absurd.

VICE CHAIRPERSON KAUFMAN: That's correct.

(Laughter.)

CHAIRPERSON PÉREZ: Okay. Any other questions to Santa Barbara before we move on?

Here's my sense, is -- you know, I understand where Santa Barbara's going with this. Obviously their plan isn't before us so we can't act on it. But it seems that -- I understand the logic of where they're looking at getting. I understand what our counsel has suggested with respect to the interpretation of what system is or isn't. I don't know that we need to take -- I don't know personally that we need to take definitive action on this rather large question contained within 7a beyond the discussion we've had.

What specific action was anybody looking at?

MS. LEAN: The reason why this was brought up is that they do plan to submit a Project Documentation Plan, and it was a suggestion of staff that this come before you
so that this question was resolved before they submitted a plan that could have potentially been rejected.

BOARD MEMBER FINNEY: But this is -- Mr. Chairman, with all due respect, this is calling for a major policy decision. We have to develop policy with respect to what I'll call second bites at the apple. And I think in this case -- you know, we've done a little bit of deposing, and I think we've found more or less that there's pretty good grounds for why we should take this into consideration, specifically with respect to Santa Barbara County. But we continue to be plagued by a nascent industry involved in technology, involved with one of the most treasured rights of the American people, which is the right to have your vote counted and have it be real, you know.

CHAIRPERSON PÉREZ: And have voter confidence in the process.

BOARD MEMBER FINNEY: That's my point, voter confidence in the process.

So, you know, in a way I'm very appreciative of Santa Barbara County for bringing this before us and also having your ducks lined up before you got here. We appreciate that, because it makes it a little easier to address your questions when maybe you come back to us. But it does -- once again, the camel's nose is now under
the tent, and we're going to have to decide what to do.
This relates directly in my opinion back to our whole
discussion today --

CHAIRPERSON PÉREZ: Well, we --

BOARD MEMBER FINNEY: -- and the second question
that we left on the table.

CHAIRPERSON PÉREZ: Right. The second question
we didn't leave on the table. The second question we put
off till October.

BOARD MEMBER FINNEY: That's what I meant.

CHAIRPERSON PÉREZ: And so we've brought it back
for us to take some definitive action.

BOARD MEMBER FINNEY: Now we have some real --

CHAIRPERSON PÉREZ: Right.

BOARD MEMBER FINNEY: -- circumstances to
address.

CHAIRPERSON PÉREZ: So are folks comfortable with
us moving forward and adding this to the broader
discussion we have with respect to the second question?

BOARD MEMBER FINNEY: I think it has to be part
of it.

VICE CHAIRPERSON KAUFMAN: Yeah, I guess my
answer to that question is yes, because I -- frankly,
based on what's been presented us, I don't really see it
as any issue for us to decide. An interpretation is being
given as to what the Election Code provision means, and
the interpretation that's been presented is if something
is expanding the system, then it should be permitted. But
it seems to me that's a factual analysis.

BOARD MEMBER FINNEY: So we're becoming a court,
more or less, that's going to have to make a decision on a
case-by-case basis, depending on the facts, every time one
of these applications comes before us. All I'm suggesting
is it's about to happen for the first time.

VICE CHAIRPERSON KAUFMAN: And I understand that.
And I think it's good that we're having this discussion
and I think it's good that we include it in the broader
discussion. But I don't know what kind of, quote, policy
we can really adopt --

BOARD MEMBER FINNEY: Well, some type of -- some
type of -- I mean, you know, some state boards and
commissions adopt regulations. Not that we should go that
far. But I'm just saying sometimes you can provide some
sense of certainty, an interpretation outside of the
specific language of a statute --

VICE CHAIRPERSON KAUFMAN: Well, I think if it's
specific to a scenario, in the event that a county, you
know, has X and needs to do Y, you know, we'll accept it.

BOARD MEMBER FINNEY: That might be the right way
to go. But I do think it should be at least part of the
broader discussion. Maybe we don't adopt a policy. But
we should thoroughly discuss this, because I see the
future and it's not going to be the counties' faults. I
have a feeling they're going to come back to us because
certain equipment's not going to get certified or --

VICE CHAIRPERSON KAUFMAN: Well, that's right.

And, again -- I said it before about Solano. But I mean I
commend Santa Barbara County for trying to do the right
thing and deliver a voting system to its people --

BOARD MEMBER FINNEY: -- on a timely basis.

VICE CHAIRPERSON KAUFMAN: -- yeah, on a timely
basis and something that will give people confidence. And

so --

CHAIRPERSON PÉREZ: If I may, I'd like to

actually go a step further. I also want to commend Santa
Barbara for raising this to us as early as they did so
that it wasn't only tied to a question proposed that they
brought forward. It's really helped us I think frame some
of our thinking around this. And I can appreciate that.

BOARD MEMBER FINNEY: I'd like to ask our counsel
to toy with the concepts here and, you know, kind of get
where we're going, how deep do we go. As Mr. Kaufman's
initial gut on this, the wiser way, just let's keep it
under case by case.

BOARD MEMBER BUSTAMANTE: Or if at all, yeah.

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BOARD MEMBER FINNEY: But I think some substantive thinking would be --

CHAIRPERSON PÉREZ: Before you respond, let me just allow Mr. Holland any final words before we move on.

MR. HOLLAND: You know, in coming up here we were kind of asking ourselves: What do we expect to walk out of here with?

But what I'd like is just some kind of general guidance on -- you know, Billie's going to go ahead and put -- we are putting together a contract right now. And we -- it's our interpretation we don't need to go to our board of supervisors to get that approved. We will -- we're in negotiations right now.

If we go in this general direction we may even bring this back October 17th. Would that be something that you think we should do?

CHAIRPERSON PÉREZ: Look, I don't want to get us in a position of pre-approving plans that aren't before us.

I will say for myself that I understand the logic of the approach that Santa Barbara's taking. And it makes sense to me and I feel comfortable with it within my understanding of the limitations.

MR. HOLLAND: And I'd also -- you know, you thanked us for bringing this forward. I'd like thank to
thank Billie Alvarez. She's the project manager that
really has gotten into this very deeply. And she's been
sharing her information with other counties and allowing
them through her research and analysis to help make
decisions on some of their voting systems. So some of the
counties that you are going to see coming up here have
used her analysis.

BOARD MEMBER FINNEY: I think it's -- I do think
it's timely and it's good and we should have this. I mean
one of the purposes of a board like this, and I think the
voters contemplated it in the initiative, is to wrestle
with these kind of questions, have a forum.

CHAIRPERSON PÉREZ: You think the voters
contemplated us being here beyond the time that we
contemplated us being here?

BOARD MEMBER FINNEY: I think they contemplated
us taking responsibility for wrestling with this issue.
And I appreciate Billie's work as well.

I would like to hear from the counties. You
know, maybe we could put out something that can be food
for thought that we send out to folks in advance of the
meeting to look at. Because this is a big issue. This is
going to continue.

MS. LEAN: That's why it's on the agenda, because
this is more than just one county issue. And it will
address -- this will be addressed by other counties. And that's why it was brought forward as a policy question to discuss.

CHAIRPERSON PÉREZ: And just for the other counties here, I mean when you submit to us your ideas on these issues -- and members of the public -- when you submit to us your ideas on the issues that are before us, we do take them into consideration, we do read them. We don't always discuss each of them as thoroughly, but we do give them thought.

MR. HOLLAND: And I'd just like to invite the counsel for the Board and Secretary of State to get in touch with Woody. He's been researching this pretty thoroughly and -- you know.

BOARD MEMBER FINNEY: Does that mean we get to go to Santa Barbara?

MR. HOLLAND: Let's hold the next meeting there.

BOARD MEMBER FINNEY: I'm a lawyer.

CHAIRPERSON PÉREZ: Okay. Did you have something to add to that?

STAFF COUNSEL KANOTZ: No, I don't.

CHAIRPERSON PÉREZ: Okay. Very good.

Next and final item.

Thank you.

MR. HOLLAND: Thank you.
BOARD MEMBER FINNEY: Thank you very much.

CHAIRPERSON PÉREZ: VMB Conflict of Interest Code Finalization -- or finalized.

MS. LEAN: It's final.

The Code was finally finalized, and I have almost all of the members' Form 700. I will talk to the members who I don't have 700s and get that sent to the Fair Political Practices Commission as soon as possible. So I just wanted to give that --

CHAIRPERSON PÉREZ: Mine's in, right?

MS. LEAN: Yes.

VICE CHAIRPERSON KAUFMAN: You have the election laws --

BOARD MEMBER BUSTAMANTE: And I think any member who doesn't -- who hasn't given it, you ought to fine them hard.

BOARD MEMBER FINNEY: Can we stay afterwards and work with you.

(Laughter.)

CHAIRPERSON PÉREZ: Okay. Anything else to come before we adjourn?

MS. LEAN: Just that our next meeting is October 17th at 10 a.m.

BOARD MEMBER BUSTAMANTE: And I'm not going to be here.

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CHAIRPERSON PÉREZ: Okay. I forgot. Do we always take motions for adjournment?

BOARD MEMBER FINNEY: I motion to adjourn.

BOARD MEMBER BUSTAMANTE: Second.

CHAIRPERSON PÉREZ: All in favor?

(Ayes.)

BOARD MEMBER FINNEY: Thank you all for wading through this one.

CHAIRPERSON PÉREZ: Thank you.

(Thereupon the California Secretary of State, Voting Modernization Board meeting adjourned at 3:50 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, 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 Secretary of State's, Voting Modernization Board meeting was reported in shorthand by me, James F. Peters, 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 meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of October, 2005.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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