

BOARD MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING MODERNIZATION BOARD

SECRETARY OF STATE BUILDING
1500 11TH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

FRIDAY, SEPTEMBER 23, 2005

2:00 P.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

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1 PROCEEDINGS

2 CHAIRPERSON PÉREZ: I'd now like to call to order
3 the February -- February, I wish -- the Friday, September
4 23rd meeting of the Voting Modernization Board.

5 If you'd please call the roll.

6 MS. MONTGOMERY: John Perez?

7 CHAIRPERSON PÉREZ: Here.

8 MS. MONTGOMERY: Stephen Kaufman?

9 VICE CHAIRPERSON KAUFMAN: Here.

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

12 Carl, are you there?

13 BOARD MEMBER GUARDINO: Yes, ma'am.

14 MS. MONTGOMERY: Michael Bustamante?

15 BOARD MEMBER BUSTAMANTE: Here.

16 MS. MONTGOMERY: Tal Finney?

17 BOARD MEMBER FINNEY: Present.

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

21 The first -- we obviously have a quorum.

22 The first item on our agenda as printed is public
23 comment. But before we get to public comment I'd like to
24 actually dispense with a normal order of business and ask
25 our Secretary of State to come forward and he can address

1 us, if there's no objection.

2 Mr. Secretary.

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

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

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

22 As policy makers and policy implementers, the VMB
23 and the Secretary of State have an obligation to the
24 voters and to the taxpayers. The voters deserve to have
25 secure accurate voting systems and enjoy the full faith of

1 the public. The foundation of any democracy worthy of
2 name is a public confidence in the electoral process.

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

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

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

24 Although January 1st, 2006, seems like an
25 appropriate deadline, because that is the HAVA deadline

1 for compliant voting systems, that deadline alone is not
2 definitive. For instance, HAVA provides that Section 102
3 punch card replacement funds, the funds that are being
4 used by some counties as a match against VMB funds, need
5 to be expended to replace voting systems by the time of
6 the first federal election after January 1st, 2006. In
7 California, barring a special election for federal office,
8 that means Section 102 funds need to be committed by June
9 6th, 2006, not January 1st, 2006.

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

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

22 I thank you for this opportunity to address you
23 and I ask that you extend this deadline to January 1st,
24 2007.

25 CHAIRPERSON PÉREZ: Thank you, Mr. Secretary.

1 On behalf of the Board, I think I want to thank
2 you for your input and your guidance on this. This is
3 something that we've dealt with several times. And the
4 manner in which you've put this together with the other
5 obligations that the counties are wrestling with is
6 greatly appreciated.

7 SECRETARY OF STATE McPHERSON: Thank you.

8 CHAIRPERSON PÉREZ: Anything else before we move
9 on?

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

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

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

22 CHAIRPERSON PÉREZ: Thank you.

23 Okay. With that, I'm going to move on with Item
24 3, which is a period of our meeting set aside for public
25 comment, not on specifically agendized items. I don't

1 have any cards before me.

2 Are there any cards for general public comment?

3 MS. LEAN: No, sir.

4 CHAIRPERSON PÉREZ: Okay. Very good.

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

7 Has everybody had a chance to review them?

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

10 CHAIRPERSON PÉREZ: Is there a second?

11 BOARD MEMBER FINNEY: Second.

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

14 All in favor?

15 (Ayes.)

16 CHAIRPERSON PÉREZ: Any opposed?

17 Okay. Thank you.

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

20 CHAIRPERSON PÉREZ: One abstention for Mr.
21 Bustamante.

22 Very good.

23 Next item before us is Item 5, Project
24 Documentation Submittal Deadlines. And the first item
25 before us is the staff report.

1 Jana, if you'd like to walk us through this.

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

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

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

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

21 Proposition 41 does not have a deadline by which
22 the funds need to be approved or distributed to the
23 counties. The above deadline that we talked about was
24 adopted as a policy and could be reconsidered by the VMB
25 at any time.

1 It should be noted though that if the deadline
2 were changed, it would postpone the reallocation by the
3 VMB of additional monies forfeited by the counties that
4 did not meet the deadline.

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

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

16 In the interests of this objective, the VMB could
17 again extend the deadline for county system with their
18 Project Documentation Plan but require that each county
19 that does not submit a Project Documentation Plan by
20 December 31st, 2005, begin submitting status reports on
21 the county's progress towards producing a Project
22 Documentation Plan. These reports could be required to be
23 submitted quarterly beginning December 31st, 2005, and
24 continuing until they fulfill the Project Documentation
25 Plan requirement.

1 Changing the deadline and requiring quarterly
2 status reports would enable the VMB to address the
3 concerns of the counties regarding the availability of the
4 certified systems while giving the Board the ability to
5 ensure that counties are moving forward in modernizing
6 their voting systems.

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

13 The staff recommendation is to recommend that the
14 January 1, 2006, deadline be extended to January 1, 2007.
15 The staff also recommends that the Board extend the
16 deadline -- if they extend the deadline, that quarterly
17 status reports be required by counties that have not begun
18 submitting a Project Documentation Plan by December 31st,
19 2005.

20 CHAIRPERSON PÉREZ: Very good.

21 Any questions for Jana before we move forward?

22 VICE CHAIRPERSON KAUFMAN: Actually I just have
23 one.

24 Under the -- when we moved the deadline this last
25 time, we did request status reports from the counties.

1 And have those all been being met, those --

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

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

13 VICE CHAIRPERSON KAUFMAN: Thank you.

14 MS. LEAN: We have one public comment.

15 CHAIRPERSON PÉREZ: Very good.

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

18 Any other questions before we move on to
19 discussion?

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

22 MS. ATKINSON: Good afternoon, members of the
23 Board. Thank you very much. I am Janice Atkinson. I'm
24 the Assistant Registrar of Voters from the County of
25 Sonoma. And once again I'm here before you requesting an

1 extension in the deadline for our voting modernization
2 fund project documentation.

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

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

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

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

23 The counties need do have more systems to choose
24 between. There's no one-size-fits-all in California
25 certainly. What they use in Alpine doesn't necessarily

1 work in Los Angeles. So we are hoping that within the
2 next few months we will have more voting systems certified
3 who will come forward through Voting Systems Panel and get
4 certification.

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

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

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

19 CHAIRPERSON PÉREZ: You have been.

20 (Laughter.)

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

22 You know, quite frankly, the counties are just
23 kind of buried right now trying to get through the next
24 couple of months. The idea of trying to purchase a system
25 right now, even if there were a system available to us,

1 it's just not feasible. I would hate for my county and
2 other counties in the same situation to have to forgo our
3 voting modernization funds because of the situation we're
4 in.

5 Thank you.

6 CHAIRPERSON PÉREZ: Thank you.

7 Any questions?

8 Okay. Thank you very much.

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

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

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

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

23 MS. LEAN: We do have a new voting system
24 expertise person here in our office. His name is Bruce
25 McDannold. And he's sitting right here next to me. And I

1 think we could give you a couple -- at least some updates
2 on where we're at.

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

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

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

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

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

1 become certified as well.

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

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

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

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

23 CHAIRPERSON PÉREZ: But he asked a question about
24 DRE.

25 MR. McDANNOLD: There has been -- there's only

1 one DRE system that has been certified, and that still has
2 a condition on it.

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

7 MR. McDANNOLD: Yes, that's correct.

8 VICE CHAIRPERSON KAUFMAN: Okay.

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

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

13 VICE CHAIRPERSON KAUFMAN: Sorry.

14 BOARD MEMBER BUSTAMANTE: No, that's okay.

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

17 BOARD MEMBER BUSTAMANTE: So basically really
18 between now and the end of the year there probably --
19 there might be a system -- between now and the end of the
20 year there might be a system, a DRE system, probably not?
21 And between now and the beginning of the third quarter the
22 likelihood -- the third quarter of 2006 the likelihood of
23 additional systems coming on line for counties to be able
24 to choose from is pretty slim too, right? Because when
25 you say things are coming up in November or December, I

1 mean that's when they're beginning the certification
2 process and so --

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

7 BOARD MEMBER BUSTAMANTE: -- for your --

8 MR. McDANNOLD: -- for our certification.

9 BOARD MEMBER BUSTAMANTE: I see. So --

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

14 BOARD MEMBER BUSTAMANTE: A contract of double --
15 okay.

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

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

25 MR. McDANNOLD: I'm hesitating to speak to the

1 counties and their processes, because that's not where
2 my --

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

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

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

18 MR. McDANNOLD: Agreed.

19 BOARD MEMBER BUSTAMANTE: In the past, experience
20 has been somewhere in the neighborhood of about like a
21 little over a year, almost a year and a half, right, I
22 think from the time the counties begin to have
23 discussions, complete -- or complete those discussions,
24 actually purchase equipment, go through the training
25 process and then have the ability to use them? It seems

1 like nothing has ever happened under a year. And as
2 memory serves, I thought it was -- the process was
3 somewhere in the neighborhood of a year and a half, right?

4 MR. McDANNOLD: I would have to let the counties
5 speak for that. But I again certainly state that the more
6 we compress the schedule, the more risk we're taking of
7 failure in an election.

8 BOARD MEMBER FINNEY: And what point during that
9 process must the counties submit their project
10 documentation -- I should say formulate their project's --
11 their Project Documentation Plans? That's the other
12 question, right?

13 CHAIRPERSON PÉREZ: Well, obviously they can't
14 begin that process until there's a system that's available
15 to them.

16 BOARD MEMBER FINNEY: Completely certified and
17 available, but what about approved and contracted and et
18 cetera? I mean that's the question. If we extend out one
19 year longer than we had originally planned, is that still
20 not long enough? I mean that's what I'm asking.

21 But, you know -- I think we originally adopted
22 this policy in the absence of such a provision existing in
23 the initiative and for us to try to incent counties to
24 move as quickly as possible. But of course in those early
25 days we were all filled with stars in our eyes and lots of

1 hopes at the pace at which this process would move.

2 Having said that and having now watched for a
3 couple of years while it's kind of dragged out on the
4 certification front, you know, I guess the question I
5 would ask is, you know, at what point would counties be
6 comfortable developing and publishing a Project
7 Documentation Plan? Is it after certification of a number
8 of systems and prior to their contracting with an entity?

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

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

23 BOARD MEMBER FINNEY: Right.

24 CHAIRPERSON PÉREZ: But I feel very comfortable
25 with us moving forward, adopting that one-year extension,

1 and revisiting it, if necessary, as we've done now at
2 least twice, to be responsive to the needs of the counties
3 as they move forward through the real world.

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

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

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

25 BOARD MEMBER FINNEY: Right. I just don't want

1 us to lose site of the impetus behind this initiative. I
2 mean it was the public that voted for this. And we're all
3 here to help implement this.

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

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

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

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

23 BOARD MEMBER FINNEY: I think so too.

24 CHAIRPERSON PÉREZ: And that's, you know,
25 obviously one of the complications in governing by

1 initiative, is that you give a straight up or down option
2 and unfortunately too often not a chance to figure out the
3 nuances that are necessary for implementing the will, if
4 not the letter. And unfortunately in this case a board
5 was impaneled to figure out those areas. And I think that
6 as long as we continue to be driven by both the mandate of
7 Prop 41 and the spirit of it in terms of how we implement
8 it, that we should continue on in the path that we're
9 going.

10 Is there a motion?

11 VICE CHAIRPERSON KAUFMAN: I'll move to adopt the
12 staff recommendation that the deadline for submittal of
13 Project Documentation Plans be extended from January 1,
14 2006, to January 1, 2007; that quarterly status reports be
15 required of counties that have not submitted Project
16 Documentation Plans by that date; and that we reserve
17 ability to review this again as we progress through 2006.

18 BOARD MEMBER FINNEY: I'll second that.

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

21 BOARD MEMBER BUSTAMANTE: Mr. Chairman?

22 CHAIRPERSON PÉREZ: Yes, Mr. Bustamante.

23 BOARD MEMBER BUSTAMANTE: With regard to the
24 status reports then, would it be appropriate to ask the
25 counties to give us a little bit more information than

1 what they're giving us now? I mean I'd be comfortable --
2 I'd like to know, for instance, what the status of the
3 discussions are with vendors. I haven't -- you know, just
4 that they're ongoing, you know, they've begun or they
5 intend to have discussions starting on a certain date.
6 And also the question about whether or when they intend to
7 go before the board of supervisors -- with their board of
8 supervisors with any kind of -- any kind of plan. Some of
9 them may already have, but some of them may not have.
10 Because obviously staff has to go through that process.
11 In fact, staff may have to go before the board of
12 supervisors first before any conversation would even take
13 place with a vendor or vendors. So --

14 MS. LEAN: How about you let us, staff, come up
15 with some proposed language to be in that report, and
16 we'll report back to you at the October meeting.

17 BOARD MEMBER BUSTAMANTE: Great.

18 CHAIRPERSON PÉREZ: Okay. If you'd call the
19 roll.

20 MS. MONTGOMERY: John Perez?

21 CHAIRPERSON PÉREZ: Aye.

22 MS. MONTGOMERY: Stephen Kaufman?

23 VICE CHAIRPERSON KAUFMAN: Aye.

24 MS. MONTGOMERY: Michael Bustamante?

25 BOARD MEMBER BUSTAMANTE: Ayes.

1 MS. MONTGOMERY: Tal Finney?

2 BOARD MEMBER FINNEY: Ayes.

3 MS. MONTGOMERY: Carl Guardino?

4 BOARD MEMBER GUARDINO: Aye.

5 CHAIRPERSON PÉREZ: Very good.

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

8 We have two counties to come before us today.

9 The first county is Del Norte County.

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

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

12 Voting Modernization Board allocation is for \$164,420.41.

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

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

22 Del Norte County projects that their project
23 completion date will be upon certification of the June 6,
24 2006, primary election.

25 The Voter Verified Paper Audit Trail requirements

1 will be fulfilled with this system as the AVC Edge units
2 being purchased by Del Norte include VeriVote printers,
3 which are a VVPAT component.

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

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

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

1 with the punch card ballots.

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

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

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

18 The contract that was executed between Del Norte
19 County and Sequoia on August 11th, shortly after the
20 directive was issued, does not conform to this directive.
21 However, nothing in Proposition 41 or the Funding
22 Application and Procedural Guide, adopted by the Board,
23 would prohibit the Board from approving Del Norte County's
24 Project Documentation Plan based on noncompliance with the
25 Secretary of State's directive.

1 It is the staff recommendation that Del Norte
2 County's Project Documentation Plan be approved and a
3 Funding Award letter be issued in the amount of
4 \$164,420.41.

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

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

12 I don't have any cards on this though.

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

15 CHAIRPERSON PÉREZ: Chris Reynolds.

16 MR. REYNOLDS: Good afternoon. Thank you for the
17 opportunity to address you on this issue. As staff told
18 the VMB, on August 3rd, 2005, the Secretary of State's
19 Office did issue a HAVA compliance notice to counties and
20 voting system vendors that articulated specific language
21 to be added to contracts, agreements and voting system
22 certification documents. The language provides that the
23 vendors seeking certification and funding would need to
24 affirmatively state that the voting system they are
25 selling complies with HAVA, the Help America Vote Act of

1 2002.

2 The language further provides that should a
3 system be found to be out of compliance, the vendor
4 accepts the responsibility to pay the costs of upgrading
5 the system to achieve compliance.

6 The intent behind the language is to ensure that
7 the burden for HAVA compliance is equitably distributed.

8 The Secretary of State's Office believe that
9 vendors are providing a product primarily for the purpose
10 of meeting new voting system standards. They are being
11 compensated with public funds for that product which they
12 designed to build. And we believe that the language that
13 we're recommending be included in contracts and
14 certification documents -- we're requiring be added to
15 those documents is essentially a declaration of those
16 facts.

17 On August 3rd, the directive was issued by the
18 Secretary of State. On August 11th, the contract between
19 Del Norte and Sequoia Voting Systems, which is the basis
20 for the Prop 41 funding allocation request, was executed.

21 We're requesting that the VMB request an
22 amendment to the contract to include the appropriate
23 language. And prior to the meeting's start I had provided
24 that. And I have copies if you can't find it.

25 It could be argued that the Prop 41 process is

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

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

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

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

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

25 With that, I can answer any questions that the

1 Board might have.

2 BOARD MEMBER FINNEY: I'd like to here from the
3 vendor.

4 CHAIRPERSON PÉREZ: Is anybody here from Sequoia?

5 VICE CHAIRPERSON KAUFMAN: Actually before --

6 CHAIRPERSON PÉREZ: Just identify if you're here.

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

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

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

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

20 BOARD MEMBER FINNEY: What is firmware?

21 CHAIRPERSON PÉREZ: -- also falls before you.

22 MR. McDANNOLD: Firmware is the --

23 CHAIRPERSON PÉREZ: If the language that we're
24 looking at addressing is with respect to software and
25 firmware, what does that not include?

1 MR. McDANNOLD: That does not include the
2 hardware itself, the physical machines and devices.

3 CHAIRPERSON PÉREZ: Including the printers and --

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

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

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

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

17 BOARD MEMBER FINNEY: So it includes the
18 hardware?

19 MR. McDANNOLD: Yes.

20 VICE CHAIRPERSON KAUFMAN: Certification --

21 BOARD MEMBER FINNEY: Certification, right, of
22 course.

23 CHAIRPERSON PÉREZ: Here's what I'd like to do
24 actually, if it meets with everybody's approval. I'd like
25 to have the representative from Del Norte come forward and

1 then the representatives from Sequoia come forward just to
2 make any statements they'd like to make. And that way we
3 will have heard from all of them before we continue on
4 with our questioning.

5 So who is here on behalf of Del Norte County?

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

8 MS. FRAISER: Hi. Thank you.

9 My name's Vicki Fraiser from Del Norte County.
10 And it is Del Norte.

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

18 My problem is Del Norte is a very small county.
19 When you're looking at me, you're looking at the county
20 recorder, you're looking at the county clerk, you're
21 looking at the county registrar of voters and the public
22 administrator with three people in my office.

23 It's a real challenge to do anything and get
24 anything done and get things before the Board with no
25 money up there.

1 I wouldn't mind working with Sequoia to meet
2 some -- maybe half and half. But I would really like to
3 have that amended if at all possible.

4 CHAIRPERSON PÉREZ: You'd like the amendment?

5 MS. FRAISER: Yes.

6 CHAIRPERSON PÉREZ: Very good. Thank you.

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

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

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

20 We have no problem agreeing that what we submit
21 is compliant under HAVA regulations that our known to us
22 at the time, that are definitively addressed in some
23 formal way. But our concern is if future court process or
24 future regulatory process imposes regulations that we're
25 not aware of, that have substantial costs to us, we

1 haven't priced that into the product. So to do that would
2 require a dramatic change in pricing structure in the
3 State of California, which would be difficult for us to
4 determine.

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

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

24 CHAIRPERSON PÉREZ: Alfie, if you could stay with
25 us for a few minutes, because I've got a couple questions,

1 and I think some of the others do. I'll ask them my way.
2 Perhaps some of the attorneys on the panel would phrase
3 them more elegantly.

4 But the way I look at it, there's four sets of --
5 there's four sets of potential language here:

6 One is the language in the Secretary's directive
7 on the 3rd.

8 The second is the set of language presented here
9 for amendment into 4d which talks about software and
10 firmware.

11 The third is some other language that addresses
12 current federal and state requirements.

13 And then the fourth is what you offered just a
14 minute ago, which is things that are known to you and are
15 definitively expressed.

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

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

24 MR. CHARLES: Yes.

25 CHAIRPERSON PÉREZ: Mr. Kaufman.

1 BOARD MEMBER FINNEY: Into the mike.

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

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

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

11 BOARD MEMBER BUSTAMANTE: So the answer is no?

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

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

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

25 MR. CHARLES: No, I think that it would be

1 helpful if government would interpret the laws and tell us
2 what they mean. We can -- we sell a voting system, and we
3 sell a system that is compliant with everything that we
4 know it to be -- what the law's to be today.

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

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

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

22 And I don't want to be in the position where a
23 county or a state gets sued and because they know that
24 there's an unlimited ability for them to accept whatever
25 they want because someone else is on the hook for it,

1 that's not a tenable business model for anybody, ourselves
2 or any of our competitors.

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

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

22 So I understand where they're coming from. At
23 the same time, I think what Mr. Kaufman's getting at --
24 and I wanted to say -- my question was: What's it all
25 about? But I'll hold off.

1 I think what Mr. Kaufman's question went to is
2 more specific to the circumstances in which we find
3 ourselves right now. Meaning that there's this moving
4 target. You heard us -- you've been here this whole
5 session and you've heard us --

6 CHAIRPERSON PÉREZ: Been here a lot longer than
7 that.

8 BOARD MEMBER FINNEY: Exactly.

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

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

21 VICE CHAIRPERSON KAUFMAN: Software --

22 MR. CHARLES: Before the end of the year.

23 BOARD MEMBER FINNEY: Yeah, possibly by the end.

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

25 CHAIRPERSON PÉREZ: They're already certified for

1 everything but the primaries.

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

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

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

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

22 So I'd be comfortable if you came back after
23 further discussions with the Secretary of State with
24 language that wasn't brought to the extent that it opens
25 you to unknown sets of potential further challenges, but

1 it was also -- well, we'll get Mr. Garamendi in here to
2 talk about that in a minute -- but that also protects the
3 counties and, quite frankly, the public from you saying,
4 "Well, even though that was already in law, even though
5 that was already in regulation, that wasn't how we
6 interpreted it. Therefore, we have no obligation along
7 those lines."

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

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

21 I would be comfortable with a condition I think
22 that the Secretary of State's Office pretty -- essentially
23 said, which is approve their application pending the
24 revision to the contract to language that's mutually
25 acceptable to the state and to the vendor. And I don't

1 think that we're the only vendor that would need to be
2 involved in that discussion. I think everybody will have
3 to have the same language.

4 BOARD MEMBER FINNEY: Absolutely, right.

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

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

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

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

19 I don't think it's within the purview of this
20 Board to amend any contract by order of this Board anyway.
21 This is a contract between two parties.

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

25 BOARD MEMBER FINNEY: Yes. I was going to agree

1 with the Chairman on that one, only because we have an
2 initiative charge that we have to fulfill. Which might
3 not necessarily require us to get to the nitty-gritty of
4 the amended language, but does require us to have
5 certified equipment --

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

10 BOARD MEMBER FINNEY: -- yeah, I wasn't
11 suggesting that.

12 VICE CHAIRPERSON KAUFMAN: -- that supercedes
13 other --

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

16 VICE CHAIRPERSON KAUFMAN: Absolutely.

17 CHAIRPERSON PÉREZ: -- consistent with 19235,
18 right?

19 BOARD MEMBER FINNEY: Yes, that's what we call
20 the --

21 CHAIRPERSON PÉREZ: Please.

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

23 CHAIRPERSON PÉREZ: I guess the question is:
24 What's the harm -- I asked the question one way and Alfie
25 answered it a different way. I think my question was

1 initially: What's the harm us putting this off till the
2 next Board meeting and giving everybody time to tweak the
3 language. Alfie's response was that he'd be very
4 comfortable with us doing an approval contingent on the
5 resolution of this matter to the satisfaction of the three
6 parties, the Secretary of State, the county and the
7 vendor.

8 Are you comfortable --

9 BOARD MEMBER FINNEY: Are you under a time
10 pressure right now?

11 VICE CHAIRPERSON KAUFMAN: So that you wouldn't
12 have to come back.

13 CHAIRPERSON PÉREZ: So that you wouldn't have to
14 come back.

15 MS. FRAISER: Okay.

16 BOARD MEMBER FINNEY: Well, what's your timeframe
17 and what's the pressure you're under at the county level?

18 MS. FRAISER: Well, again, like I said -- and
19 Janice said I really sound loud -- my basic problem is I'm
20 the one that has to train the poll workers, I'm the one
21 that has to do everything. I'm the one that has to go
22 into training with Sequoia and still run the recorder's
23 office and the clerk's office and do my public
24 administrative function. So the time is very important to
25 me. I'd like to get this going as soon as I can.

1 CHAIRPERSON PÉREZ: But you're not going to do
2 this training before the November special election, for
3 example, correct?

4 MS. FRAISER: No, no --

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

6 MS. FRAISER: -- no.

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

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

15 CHAIRPERSON PÉREZ: Well, let me throw out this
16 idea and see how folks feel about it. I mean I feel
17 comfortable approving this contingent upon resolution of
18 this specific element to the contract to the satisfaction
19 of the Secretary of State's Office, the county and the
20 vendor. However, I'm not comfortable making that an
21 indefinite amount of time. We're now at September 23rd --
22 yeah, I was actually looking at giving -- but having that
23 authorization sunset prior to our November 16th meeting so
24 that if they weren't able to resolve this matter in a way
25 that was to the satisfaction of the three parties, then

1 our authorization sunsets and they'd have to come back to
2 us again. If they were able to resolve it to the
3 satisfaction of the three parties, then they move forward
4 without having to come back to us.

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

10 BOARD MEMBER FINNEY: -- time certain.

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

13 CHAIRPERSON PÉREZ: Mr. Bustamante.

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

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

22 CHAIRPERSON PÉREZ: Don't we have another --

23 VICE CHAIRPERSON KAUFMAN: It's not a DRE.

24 CHAIRPERSON PÉREZ: Oh, it's not a DRE.

25 BOARD MEMBER BUSTAMANTE: The second question

1 I --

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

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

10 MR. REYNOLDS: Yeah, to clarify, we do expect --
11 we do understand the concerns of the vendors, the
12 industry, if you will. It was not our intention that this
13 language be open-ended. We understand there's a number of
14 contingencies that you have to plan for and accommodate
15 for in the policy, some of which Alfie articulated court
16 interpretations. How do you balance a court
17 interpretation that everyone, maybe but the person who
18 brings the suit, considers a clarification declaratory of
19 existing law; except that party who might be an industry
20 party who says, "No, that's not the way to interpret it."
21 So there's a balance there that needs to be achieved. And
22 we would like to have the time to achieve that balance.

23 And we'd also like to prevail upon the Board,
24 which we were going to do in some future time, to come
25 back -- well, actually by the next meeting come back with

1 a policy where we can ask you, "Can you incorporate this,
2 you know, requirement? Would you be willing to
3 accommodate this requirement that" -- you know, we're
4 talking about HAVA-compliant systems and so on and so
5 forth.

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

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

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

1 have to come back to us new?

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

4 MS. FRAISER: Del Norte agrees with that.

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

7 BOARD MEMBER FINNEY: We anticipate --

8 CHAIRPERSON PÉREZ: The sooner, the better for
9 us.

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

13 (Laughter.)

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

17 I mean the point I'm trying to make kind of
18 jokingly here is that, you know, in the same way that it's
19 not really our purview I think to try to draft specific
20 language that could go into the amendment of a contract, I
21 would also assume that for the Secretary's part, while we
22 can make recommendations to a particular local government
23 entity to try to embrace certain policies, the
24 nitty-gritty of the legal language, I would hope we can
25 kind of figure out to the best of our abilities so that it

1 doesn't draw a dec relief action.

2 MR. REYNOLDS: We understand that the contract --
3 the parties to the contract are the county and the vendor.
4 You're absolutely right. That's why I -- maybe I didn't
5 emphasize it enough. But it was a request to the Voting
6 Modernization Board to request the parties to make an
7 amendment to the contract.

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

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

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

15 CHAIRPERSON PÉREZ: Mr. Bustamante.

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

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

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

25 BOARD MEMBER FINNEY: It's been awhile.

1 CHAIRPERSON PÉREZ: I think we last spoke about
2 it with respect to the TSX, right?

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

5 BOARD MEMBER FINNEY: Do you guys recall?

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

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

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

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

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

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

24 BOARD MEMBER FINNEY: Yeah, it's certified but
25 not for primaries.

1 VICE CHAIRPERSON KAUFMAN: It's certified, but
2 subject to contingency on the software for the primaries.

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

5 MR. MCDANNOLD: Yes.

6 BOARD MEMBER BUSTAMANTE: It is certified?

7 MR. MCDANNOLD: Yes.

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

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

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

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

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

19 BOARD MEMBER BUSTAMANTE: So the answer's yes?

20 MS. LEAN: That's correct.

21 MR. REYNOLDS: And what I was trying to identify
22 is the fact that HAVA even anticipates that there are
23 different voting system standards that need to be met in
24 different ways. Again, in the case of a person who's got
25 to be able to detect an over-vote or find an error in

1 their ballot, you can meet that condition with a voter
2 education program. As was mentioned earlier, there's a
3 grandfathering that's been articulated by the Secretary of
4 State, which says, in essence, if you have a certified
5 system and you have experience with it, it's okay. It's a
6 system that you can use. And, again, to meet that
7 requirement for detecting an error in your ballot, like an
8 over-vote, you can use a voter education program. But
9 there are other voting system standards in HAVA that deal
10 with disability access. Now, in order to make some -- a
11 system be able to meet that requirement, you're really
12 going to need --

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

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

23 MR. McDANNOLD: The vendor has told us that they
24 anticipate coming forward with revised software that
25 resolves that issue December of this year. So we're

1 totally dependent on the vendor completing their software
2 and going through the federal -- completing the federal
3 testing process and qualification process by that
4 deadline.

5 BOARD MEMBER FINNEY: Welcome to the team.

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

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

10 MS. LEAN: Yes.

11 VICE CHAIRPERSON KAUFMAN: We have?

12 BOARD MEMBER FINNEY: We have, yes.

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

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

17 VICE CHAIRPERSON KAUFMAN: You want to give --

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

19 VICE CHAIRPERSON KAUFMAN: The Chair entertains a
20 motion to -- the Chair entertains a motion to accept the
21 staff recommendation contingent upon resolution of items
22 referenced in Section 4d of the contract to the
23 satisfaction of the representatives of Del Norte County
24 Sequoia, and the Secretary of State's Office. Such
25 authorization sunsets November 15th of this year. If the

1 three parties cannot reach resolution -- failure to reach
2 resolution would require the county to come back before
3 our Board again should they want to avail themselves of
4 Prop 41 monies.

5 Would anybody like to make that motion?

6 VICE CHAIRPERSON KAUFMAN: I'll make the motion.

7 BOARD MEMBER GUARDINO: I'll second that motion.

8 CHAIRPERSON PÉREZ: Thank you.

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

10 MS. MONTGOMERY: John Perez?

11 CHAIRPERSON PÉREZ: Aye.

12 MS. MONTGOMERY: Stephen Kaufman?

13 VICE CHAIRPERSON KAUFMAN: Aye.

14 MS. MONTGOMERY: Michael Bustamante?

15 CHAIRPERSON PÉREZ: We'll skip Mr. Bustamante and
16 come back to him.

17 MS. MONTGOMERY: Okay. Tal Finney?

18 BOARD MEMBER FINNEY: I'm going to abstain.

19 MS. MONTGOMERY: Carl Guardino?

20 BOARD MEMBER GUARDINO: Aye.

21 CHAIRPERSON PÉREZ: Mr. Bustamante?

22 BOARD MEMBER BUSTAMANTE: Aye --

23 VICE CHAIRPERSON KAUFMAN: Reluctant aye.

24 BOARD MEMBER BUSTAMANTE: -- reluctantly.

25 BOARD MEMBER GUARDINO: Mr. Chairman, with

1 apologies, I have to sign off and get back into a board
2 meeting that I'm at down here in Silicon Valley, unless
3 you need me on the next vote.

4 CHAIRPERSON PÉREZ: No, I think we'll be okay.
5 Thank you Mr. Guardino.

6 BOARD MEMBER GUARDINO: Thank you, Mr. Chairman.

7 CHAIRPERSON PÉREZ: Okay. Very good.

8 Item 6b, Solano County.

9 MS. LEAN: Can I ask one clarifying question?

10 Upon authorizing this approval, you sign a
11 funding award letter. Would you like to sign that letter
12 with conditions added to it? Would you --

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

15 MS. LEAN: Okay. Thank you, sir.

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

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

1 or --

2 BOARD MEMBER FINNEY: Yes.

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

5 We're on the new issue.

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

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

21 CHAIRPERSON PÉREZ: Very good.

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

24 I mean it seems to me that practically speaking
25 until this issue is resolved, we're not going to be able

1 to have any more counties come before us for approval
2 because this is going to affect essentially every contract
3 that's going to be entered into from this point forward.

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

8 CHAIRPERSON PÉREZ: Very good.

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

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

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

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

20 BOARD MEMBER FINNEY: The second issue?

21 CHAIRPERSON PÉREZ: The second issue.

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

24 CHAIRPERSON PÉREZ: And is everybody clear what
25 we mean by the second issue?

1 Okay. Very good.

2 Item 6b, Solano County.

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

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

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

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

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

24 At the March 19th, 2003, meeting of the VMB
25 Solano County came forward with their Project

1 Documentation Plan to modernize their voting equipment
2 from the decertified Votomatic punch card voting system to
3 the Diebold AccuVote touch screen system. The VMB
4 approved Solano County's Project Documentation Plan and
5 issued a funding award letter to Solano County for its
6 entire approved formula allocation of \$2,297,314.22.
7 Solano County did not submit invoices to be reimbursed for
8 this equipment and was never issued any funds for the
9 approved project.

10 Solano County used the AccuVote TS units in the
11 November -- sorry -- in the March 2004 Presidential
12 Primary Election. However, in April of 2004, the
13 Secretary of State decertified the use of the AccuVote TS
14 units. This decertification motivated Solano County Board
15 of Supervisors to direct the election personnel to replace
16 the touch screen units with the ES&S optical scan system
17 in May of 2004.

18 Solano County acquired their new ES&S optical
19 scan system in September of 2004 and began using their
20 equipment during the November 2004 Presidential General
21 Election. The county made enhanced poll worker training
22 materials to assist with the transition to the new voting
23 equipment -- optical scan voting system. Solano County
24 set up demonstrations and distributed education material
25 on how to use the new system at a variety of venues to

1 introduce this new optical scan technology. Of Solano
2 County surveyed voters and pole workers on the new system,
3 the results showed an overall satisfaction with the new
4 optical scan voting system.

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

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

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

23 Please note that the staff proposed Phase 1
24 funding award is based upon allowable reimbursement under
25 Proposition 41 for voting equipment hardware and software

1 only. The Election Support Service listed in Solano
2 County's contract with ES&S would not be covered as a
3 reimbursable claim under Proposition 41.

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

8 Any questions?

9 CHAIRPERSON PÉREZ: Mr. Kaufman.

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

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

17 (Laughter.)

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

1 purchase of a new voting system.

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

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

11 VICE CHAIRPERSON KAUFMAN: Sure.

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

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

24 CHAIRPERSON PÉREZ: So, again, given that, you
25 interpreted it as being a modification of the initial?

1 MS. LEAN: (Nods head.)

2 VICE CHAIRPERSON KAUFMAN: Of the initial
3 request.

4 MS. LEAN: Correct.

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

8 Counsel.

9 STAFF COUNSEL KANOTZ: Michael Kanotz, Staff
10 Counsel.

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

1 would render a county ineligible for the funds.

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

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

13 Any other questions?

14 BOARD MEMBER BUSTAMANTE: Move the staff
15 recommendation.

16 CHAIRPERSON PÉREZ: Mr. Bustamante moves.

17 VICE CHAIRPERSON KAUFMAN: I'll second.

18 CHAIRPERSON PÉREZ: Mr. Kaufman seconds.

19 MS. MONTGOMERY: Roll call?

20 CHAIRPERSON PÉREZ: If you would.

21 MS. MONTGOMERY: John Perez?

22 CHAIRPERSON PÉREZ: Aye.

23 MS. MONTGOMERY: Stephen Kaufman?

24 VICE CHAIRPERSON KAUFMAN: Aye.

25 MS. MONTGOMERY: Michael Bustamante?

1 BOARD MEMBER BUSTAMANTE: Aye.

2 MS. MONTGOMERY: Tal Finney?

3 BOARD MEMBER FINNEY: Aye.

4 CHAIRPERSON PÉREZ: Very good.

5 MS. MONTGOMERY: Carl Guardino's out.

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

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

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

19 MS. LEAN: I'll start the discussion.

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

25 But what the basic policy question is is what

1 constitutes an expansion of an existing system or
2 components related to a previously approved application?

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

11 BOARD MEMBER FINNEY: So as If Solano had
12 actually spent the money?

13 MS. LEAN: Correct.

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

19 Under the Proposition 41 the VMB was given the
20 authority to reject any applications for fund money if
21 deemed inappropriate, excessive, it did not comply with
22 this article or intent. This is something you were
23 discussing earlier. And the proposition further states
24 that a county whose application is rejected shall be
25 allowed to submit an amended application.

1 I will turn over the legal interpretation of
2 19234(c)(3) to our new staff attorney.

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

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

19 In addition, regardless of whether the county has
20 previously applied for funds, it may receive Proposition
21 41 funds for the expansion of an existing system that was
22 purchased by the county.

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

25 (Laughter.)

1 BOARD MEMBER FINNEY: If this is for short phone
2 calls.

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

8 So I think what --

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

12 STAFF COUNSEL KANOTZ: Correct.

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

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

22 CHAIRPERSON PÉREZ: What if you change the apple?

23 VICE CHAIRPERSON KAUFMAN: That's what just
24 happened.

25 CHAIRPERSON PÉREZ: No, I --

1 VICE CHAIRPERSON KAUFMAN: Before, I mean.

2 STAFF COUNSEL KANOTZ: But that general rule also
3 has two, and I read as, mutually exclusive exceptions.
4 One, an application for an expansion of an existing
5 system; or, two, components that are related to a
6 previously approved application.

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

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

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

24 So if a county purchased a system after the point
25 in time in which we were eligible to reimburse them for a

1 portion of that acquisition, they did so in good faith to
2 modernize their equipment, they did so in a way by
3 purchasing a system or series of systems or complement of
4 devices that were certified for use by both state and
5 federal regs, and now the rules change, you know, their
6 system is no longer certified, should there previous
7 efforts to receive reimbursement completely consistent
8 with the law preclude them from being able to avail
9 themselves of further funding to actually comply with
10 other elements of the law and afford the voters in their
11 county the equipment that they need to be able to vote?

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

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

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

24 BOARD MEMBER FINNEY: I knew that was coming.

25 (Laughter.)

1 BOARD MEMBER FINNEY: Is Santa Barbara County
2 here? I knew you all were here.

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

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

17 BOARD MEMBER FINNEY: Is he coming with counsel?

18 MR. HOLLAND: Yes.

19 BOARD MEMBER FINNEY: So we can announce all --

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

22 BOARD MEMBER FINNEY: Is that our chief deputy
23 here?

24 MR. HOLLAND: Good afternoon. I'm Joe Holland,
25 Santa Barbara County Clerk, Recorder and Assessor and the

1 Registrar of Voters. Mr. Lavayen is counsel with the
2 county.

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

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

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

12 BOARD MEMBER FINNEY: A lucky job.

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

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

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

25 To become HAVA compliant what we want to do is

1 purchase the AutoMARK that is consistent and can only be
2 used with ES&S optical scan system. The ES&S optical scan
3 system, in our view, expands the scope of the existing
4 Diebold optical scan system, as ES&S optical scan system
5 does meet the 2002 voting system standards. The Diebold
6 optical scan system right now does not have an option for
7 us to be compliant with those.

8 So right now what we are seeing is you have ES&S
9 optical scan, you have an AutoMARK. There is a solution
10 for us right now to become HAVA compliant and to meet the
11 2002 voting system standards, what we can consider an
12 expansion and an upgrade of our current system.

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

16 MR. HOLLAND: The Vote Remote?

17 BOARD MEMBER FINNEY: Yeah.

18 MR. HOLLAND: Yes.

19 BOARD MEMBER FINNEY: So what they're doing, Mr.
20 Chairman, is they're not -- they're not throwing away any
21 of the equipment that they purchased through us. They are
22 attempting to address an issue with which we continue to
23 be plagued, issues of noncompliance with respect to the
24 technology that's out there. And so they're claiming that
25 it's an expansion of their system consistent with

1 increasing the size, extent, the scope and capabilities of
2 an existing system.

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

5 BOARD MEMBER BUSTAMANTE: When we allocated the
6 2.75 million to the county, what did it spend the money
7 on?

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

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

15 MR. HOLLAND: One million.

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

18 MR. HOLLAND: 1999, right.

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

22 (Laughter.)

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

25 (Laughter.)

1 CHAIRPERSON PÉREZ: Anybody else have any
2 questions?

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

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

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

9 BOARD MEMBER FINNEY: That's what I heard.
10 That's why I asked it. I knew the answer before I asked
11 it.

12 But having said that, I'd like to ask a question.

13 At what point -- at what point did you become
14 aware that you were going to have a timing issue with
15 respect to the Diebold equipment?

16 MR. HOLLAND: A timing issue?

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

20 MR. HOLLAND: Well, Billie Alvarez, our project
21 manager, she's been looking at all the different systems.
22 We actually -- she was actually running our -- a good
23 portion of our elections with Bob Smith. And we took her
24 off line, made her a project manager. She looked at all
25 the different systems. And, you know, as it became

1 apparent that Diebold did not get certified for the touch
2 screens and that they still don't have a solution for --
3 that we're aware of -- for upgrading our optical scan
4 system to become 2002 compliant. So what we were looking
5 at was an option of having -- keeping our current optical
6 scan system and getting one touch screen with Diebold.
7 They're not certified for their touch screens, and they
8 don't have their optical scan systems ready for 2002
9 voting system standards, which is required by June 2006.

10 And we don't even know what that would cost for
11 us to do that upgrade.

12 BOARD MEMBER FINNEY: Right.

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

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

17 MR. HOLLAND: Two hundred twenty-one.

18 CHAIRPERSON PÉREZ: If you move forward as you
19 anticipate attempting to move forward, how many of those
20 221 units are you going to continue to use?

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

24 VICE CHAIRPERSON KAUFMAN: Just for my own
25 education here. I mean what is it about the Diebold --

1 what is it about the system that you purchased that is not
2 capable of being compliant? And how is the new optical
3 scan system different from the one you purchased in terms
4 of compliance? What is it about the two systems that, you
5 know, enables you under a new system to be compliant
6 through an optical scan when the old one doesn't?

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

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

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

22 MR. McDANNOLD: The AutoMARK provides the
23 accessibility component of one device per polling place
24 required under HAVA for people with disabilities to vote
25 unassisted.

1 BOARD MEMBER FINNEY: That's the ES&S product is
2 the only one that can function in conjunction with the
3 AutoMARK, is that what -- that's their --

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

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

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

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

24 MR. McDANNOLD: -- because they're two different
25 ballots. They're not compatible.

1 BOARD MEMBER FINNEY: It's just on the absentee
2 and the vote counting programs.

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

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

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

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

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

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

19 CHAIRPERSON PÉREZ: Okay.

20 MR. HOLLAND: One in each polling place.

21 VICE CHAIRPERSON KAUFMAN: So there's only one.

22 CHAIRPERSON PÉREZ: So otherwise -- so, yes? The
23 answer is yes?

24 VICE CHAIRPERSON KAUFMAN: The answer is yes.
25 You are going to have only one in each precinct?

1 MR. HOLLAND: Right. But then the current ones
2 that we have in house we cannot use.

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

8 VICE CHAIRPERSON KAUFMAN: That's correct.

9 (Laughter.)

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

12 Here's my sense, is -- you know, I understand
13 where Santa Barbara's going with this. Obviously their
14 plan isn't before us so we can't act on it. But it seems
15 that -- I understand the logic of where they're looking at
16 getting. I understand what our counsel has suggested with
17 respect to the interpretation of what system is or isn't.

18 I don't know that we need to take -- I don't know
19 personally that we need to take definitive action on this
20 rather large question contained within 7a beyond the
21 discussion we've had.

22 What specific action was anybody looking at?

23 MS. LEAN: The reason why this was brought up is
24 that they do plan to submit a Project Documentation Plan,
25 and it was a suggestion of staff that this come before you

1 so that this question was resolved before they submitted a
2 plan that could have potentially been rejected.

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

16 CHAIRPERSON PÉREZ: And have voter confidence in
17 the process.

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

20 So, you know, in a way I'm very appreciative of
21 Santa Barbara County for bringing this before us and also
22 having your ducks lined up before you got here. We
23 appreciate that, because it makes it a little easier to
24 address your questions when maybe you come back to us.
25 But it does -- once again, the camel's nose is now under

1 the tent, and we're going to have to decide what to do.
2 This relates directly in my opinion back to our whole
3 discussion today --

4 CHAIRPERSON PÉREZ: Well, we --

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

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

10 BOARD MEMBER FINNEY: That's what I meant.

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

13 BOARD MEMBER FINNEY: Now we have some real --

14 CHAIRPERSON PÉREZ: Right.

15 BOARD MEMBER FINNEY: -- circumstances to
16 address.

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

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

22 VICE CHAIRPERSON KAUFMAN: Yeah, I guess my
23 answer to that question is yes, because I -- frankly,
24 based on what's been presented us, I don't really see it
25 as any issue for us to decide. An interpretation is being

1 given as to what the Election Code provision means, and
2 the interpretation that's been presented is if something
3 is expanding the system, then it should be permitted. But
4 it seems to me that's a factual analysis.

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

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

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

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

24 BOARD MEMBER FINNEY: That might be the right way
25 to go. But I do think it should be at least part of the

1 broader discussion. Maybe we don't adopt a policy. But
2 we should thoroughly discuss this, because I see the
3 future and it's not going to be the counties' faults. I
4 have a feeling they're going to come back to us because
5 certain equipment's not going to get certified or --

6 VICE CHAIRPERSON KAUFMAN: Well, that's right.
7 And, again -- I said it before about Solano. But I mean I
8 commend Santa Barbara County for trying to do the right
9 thing and deliver a voting system to its people --

10 BOARD MEMBER FINNEY: -- on a timely basis.

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

14 CHAIRPERSON PÉREZ: If I may, I'd like to
15 actually go a step further. I also want to commend Santa
16 Barbara for raising this to us as early as they did so
17 that it wasn't only tied to a question proposed that they
18 brought forward. It's really helped us I think frame some
19 of our thinking around this. And I can appreciate that.

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

25 BOARD MEMBER BUSTAMANTE: Or if at all, yeah.

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

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

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

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

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

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

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

24 MR. HOLLAND: And I'd also -- you know, you
25 thanked us for bringing this forward. I'd like thank to

1 thank Billie Alvarez. She's the project manager that
2 really has gotten into this very deeply. And she's been
3 sharing her information with other counties and allowing
4 them through her research and analysis to help make
5 decisions on some of their voting systems. So some of the
6 counties that you are going to see coming up here have
7 used her analysis.

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

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

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

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

24 MS. LEAN: That's why it's on the agenda, because
25 this is more than just one county issue. And it will

1 address -- this will be addressed by other counties. And
2 that's why it was brought forward as a policy question to
3 discuss.

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

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

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

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

18 BOARD MEMBER FINNEY: I'm a lawyer.

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

21 STAFF COUNSEL KANOTZ: No, I don't.

22 CHAIRPERSON PÉREZ: Okay. Very good.

23 Next and final item.

24 Thank you.

25 MR. HOLLAND: Thank you.

1 BOARD MEMBER FINNEY: Thank you very much.

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

4 MS. LEAN: It's final.

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

10 CHAIRPERSON PÉREZ: Mine's in, right?

11 MS. LEAN: Yes.

12 VICE CHAIRPERSON KAUFMAN: You have the election
13 laws --

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

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

19 (Laughter.)

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

22 MS. LEAN: Just that our next meeting is October
23 17th at 10 a.m.

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

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

3 BOARD MEMBER FINNEY: I motion to adjourn.

4 BOARD MEMBER BUSTAMANTE: Second.

5 CHAIRPERSON PÉREZ: All in favor?

6 (Ayes.)

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

9 CHAIRPERSON PÉREZ: Thank you.

10 (Thereupon the California Secretary of State,
11 Voting Modernization Board meeting adjourned
12 at 3:50 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Secretary of State's, Voting Modernization Board
7 meeting was reported in shorthand by me, James F. Peters,
8 a Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

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

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

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JAMES F. PETERS, CSR, RPR

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