

**Minutes of the Public Meeting
of the United States Election Assistance Commission
February 2, 2006**

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on February 2, 2006, at the Hyatt Regency Hotel, Yorktown Room, 400 New Jersey Avenue, Northwest, Washington, DC 20004. The public meeting convened at 10:00a.m. and ended at 12:50p.m.

PUBLIC MEETING

Call to Order:

Chairman Paul DeGregorio called the meeting to order at 10:00a.m.

Pledge of Allegiance:

Chairman DeGregorio led all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners

EAC General Counsel Juliet Thompson Hodgkins called roll of the members of the Commission and found present: Chairman Paul DeGregorio, Vice-Chairman Ray Martinez III, Commissioner Donetta Davidson, and Commissioner Gracia Hillman.

Senior Staff

Executive Director Tom Wilkey and General Counsel Juliet Thompson Hodgkins.

Presenters

Sandy Steinbach, National Association of State Election Directors; Stephen Berger, TEM Consulting, Inc.; Wendy Noren, Boone County Clerk, Columbia, MO; and John Groh, Chairman, ITAA, Election Technology Council

Adoption of the Agenda:

Chairman DeGregorio asked for a motion to adopt the agenda. Vice-Chairman Martiniez moved to approve the agenda. The motion was seconded.

Commissioner Hillman requested a change to the agenda to reflect that Brian Hancock from the EAC staff would be reading the testimony of Brad King, who was unable to attend due to illness. The testimony of Brad King is on panel 2 and will be an additional change to the written agenda.

Motion carried unanimously.

Adoption of Minutes:

Chairman asked for a motion to adopt the minutes of the previous meeting. Commissioner Davidson moved that the minutes of the meeting of December 13, 2005 be approved. The motion was seconded.

Motion carried unanimously.

Reports:

Ms. Margaret Sims reported that over \$18,000,000 in HAVA requirements payments have been processed out of \$2.3 billion. The funds disbursed are composed of \$830,000,000 in requirements payments appropriated for Fiscal Year 2003 and almost \$1.5 billion have been appropriated for Fiscal Year 2004. The funds remain available to the states until expended. All 55 jurisdictions and four eligible territories have received their full share of the funds.

Ms. Sims continued by stating that EAC needs to continue reminding the states of their annual reporting responsibilities. The next report for the Title I and Section 101 and 102 funds are due February 28th, and will cover activity that is carried in the 2005 calendar year. The report for Title II requirements payments are due March 30th and will cover activity from October 1, 2004 through September 30, 2005.

Ms. Sims continued by stating that EAC has obtained services of KPMG to recommend a position on direct cost proposals. KPMG is reviewing proposals submitted by the states and sought additional information where necessary. EAC coordinated with the National Association of Secretaries of States ("NASS") and the National Association of State Election Directors ("NASED") to conduct the first training session on the preparation of direct cost proposals scheduled for February 5, 2006 in conjunction with their mid-winter meeting.

Ms. Sims concluded by stating although EAC has disbursed all the funds appropriated for requirements payments, there may be further requirements payments. HAVA Section 101(c)(1) provides that Section 102 funds must be returned when states fail to replace punch card and lever machine voting systems by the applicable deadline. Those funds will be transferred to EAC.

Chairman DeGregorio gave an overview of the two panels that were to present on the national certification testing process, the transition of the duty from NASED to the EAC and the implication of the EAC adoption of the Voluntary Voting System Guidelines. The first panel would address

the perspective of other certification programs; and the second panel would close with the viewpoint of EAC stakeholders.

Chairman DeGregorio asked that Mr. Wilkey give his overall perspective on the national certification testing process and the transition. Mr. Wilkey stated that the EAC is making progress and he acknowledges the role that NASED is playing in this transition process.

Presentations:

Implementing the Certification Program: Perspectives on Application of the Program from Existing Systems

Presenter: Sandy Steinbach, NASED

Ms. Steinbach reported the history and slow process of obtaining a federal funded voting system and testing program. In 1975, Roy Saltman of NIST issued a report to the Office of Federal Elections stating the basic cause of computer related election problems was the lack of appropriate technical skills at the state and local level to implement sophisticated standards against which voting equipment can be tested.

Nine years later the Federal Election Commission ("FEC") developed the first Voting Systems Standards, which were published in 1990. FEC issued a separate document explaining a need for a national testing program, but it was not adopted nor funded. It wasn't until 2000 (the adoption of HAVA) that a federal government agency has been entrusted with the responsibility. In 1992, NASED developed the accreditation program and published the "NASED Program Handbook: Accreditation of Independent Testing Authorities for Voting System Qualification Testing." The mission of the program was to assure that any laboratories performing qualification tests of voting systems had the ability to do the necessary testing.

In 1997, NASED asked the FEC to update the dated Voting System Standards. In 2002, the FEC issued the updated Voting System Standards. Since then NASED issued two Technical Guides to clarify issues published in the Standards, and is now working on a third guide of growing complexities of having a software and hardware ITA responsible for testing a single system. In addition, in 2003 NASED adopted a formal testing policy and an addendum was issued in 2005.

Ms. Steinbach concluded that the NASED technical committee consists of three consultants: Brit Williams, Paul Craft and Steve Freeman. Though HAVA requires that the EAC provide certification of voting systems, NASED still provide oversight of the existing testing labs. The

responsibility is great, and NASED is ready for EAC to relieve them of this immense burden.

Presenter: Steven Berger, TEM Consulting, Inc.

Mr. Berger reported general observations about the voting equipment conformity assessment system and conclusions on how further improvements might best be made. The characteristics of the US voting equipment conformity assessment system are resource limited and it is more periodic than routine. The responsibility is distributed between the federal, state and local jurisdictions. There are many issues relating to certification, such as: What is a minimal acceptable system, are the testing lab/testers/lab assessors qualified, will the vendor deliver units within manufacturing tolerances to those tested, etc.

EAC needs to identify the best practices and procedures needed to assure that the products delivered are within tolerance of those that are certified. The first step should be to assure that the vendors have their own production and change control systems. More testing will not increase quality, but a culture of quality with a shared understanding of the specific requirements will increase quality. Evaluation should be redundant on critical elements and sparse on less important elements.

Mr. Berger concluded that vendors should focus on the right issues more effective than revealing deficiencies during certification. Solutions must be in election management practices or in equipment. The ITA process should be molded to add maximum value to the efforts of state and local officials. A well constructed certification system provides satisfactory answers to central issues.

Questions and Answers:

In response to questions by EAC Commissioners, Mr. Berger reported the ITA's are being reviewed under NVLAP procedures for competence. Critical attention needs to be forwarded to the quality of the lab certification process. The labs need to be fully prepared to test to the new requirements. He added that although there is not an actual date of completion of the certification process; the implementation should go by rather quickly. The Federal Register publication requirements will set the time frame on this project.

Ms. Hodgkins reported that first the Commission would need to review and issue certificates for accreditation of laboratories on a temporary basis. Then, the process for certification of voting system needs to be published in the Federal Register for comment.

Ms. Steinbach reported that the states have their own processes for adopting or not adopting the VVSG. The vendors need equipment that can be tested and meets the VVSG. Public perception is very important. The public relations issue is to explain in a way that the average person can understand and feel confident that someone is protecting the integrity of the process. EAC should encourage the states to adopt the certification process.

Presenter: Wendy Noren, Boone County Clerk, Columbia, MO

Ms. Noren testified it was envisioned that equipment would be manufactured and tested to a set of comprehensive guidelines prior to the HAVA 2006 deadline for meeting accessibility and second chance voting provisions. This did not occur. This left local jurisdictions in the unenviable position of purchasing HAVA compliant equipment without the benefit the EAC's extensive efforts to craft a set of minimum guidelines and design the testing process.

Many of the components of the equipment to be utilized over the next 12 months have never been field tested on a large scale. The impact of not having a phase in period will force some jurisdictions to expend large sums shortly after their initial investment in equipment. There will be no knowledge of which equipment will require significant retooling to meet the 2005 VVSG until the testing criteria is finalized and the equipment moves through the testing process.

Local jurisdictions may end up paying for some of the ongoing costs caused by the voluntary guidelines. Vendors who are required to retool and retest equipment across multiple guidelines in multiple layers, will spread the cost, increasing cost for purchase, upgrades, and ongoing maintenance of equipment. A phase in period may allow election officials to spread costs over a long period to better plan for these inevitable costs and may allow an opportunity to upgrade equipment not to the 2005 VVSG criteria and design elements that are a result of the next version of the VVSG.

One final implementation date will allow those vendors who are trying to respond to the requirements in a responsible fashion. Many of the new requirements are critical to our ability to effectively develop administrative procedures that ensure this equipment works the way it is tested. A phase in period that allows for delays in the development of these may not serve our interests when problems inevitably occur.

Ms. Noren concluded, administrative procedures utilized for American elections are a work in progress. The ability to effectively administer the

process and maintain voter confidence will depend on everyone working together to find effective, affordable solutions. The evolution of a perfect voting system will be a result of trial and error. Reasoned responses, problem identification and innovative solutions will develop over time.

Presenter: John Groh, Chairman, ITAA, Election Technology Council (ETC)

Mr. Groh reported the current ETC members are Advance Voting Solutions, Danaher Guardian Voting Systems, Diebold Election Systems, Election Systems & Software, Hart InterCivic, Perfect Voting System, Sequoia Voting Systems, and Unilect Corporation. Voting solutions provided and supported by our members account for over 90 percent of the voting systems in the marketplace today.

It is anticipated from communications with our customers that some state election agencies may require certification to the VVSG sooner than the effective date. To facilitate federal independent test authority certification before the December of 2007 deadline, the new certification process will likely need to be in place before the end of the year. The EAC should give serious consideration to the fundamental issues of testing frequency and repetition. Reducing the cost and delay imposed by continual and often repetitive testing should be a primary consideration of the new certification process. By combining the federal level ITA certification testing and some basic state level tests, the EAC would streamline the system certification process, saving valuable time for election officials and reducing redundant non-value added costs for everyone.

The ETC members urge the EAC and NIST to consider the very important implication of the following issues in designing the new process and setting out policy to treat systems certified under the existing and the current 2002 Voluntary Voting System Standards (VVSS). ETC urges the EAC to incorporate NIST's voting software repository.

Mr. Groh concluded changes to hardware platforms can impact the training that the customer has invested in its poll workers as well as the associated voter education programs. To mitigate the economic and election performance risks, the membership of the ETC makes the following recommendations after the 2005 VVSG are affective in 2007:

- **The EAC should set a policy that allows for the ongoing certification of software updates to those 2002 certified platforms:** EAC should not have to submit changes to the existing hardware platform unless the hardware change can be shown to be critical to the safety, security, accuracy and reliability of voting systems.

- **The should be a provision made for emergency action on software updates:** This would allow election officials who require enhancements, encounter voting law changes or identify software anomalies in pre-election test, to obtain certified fixes for equipment certified under the 2002 or 2005 standard.
- **Any software updates submitted for certification should meet the new or the current standard.**
- **The transition policy should remain effective for future revisions to the VVSG guidelines.**
- **The transition policy needs to be documented and clearly communicated:** This would allow all involved full knowledge and awareness so budget planning can be managed.
- **The EAC must take into consideration how the improvements required by the VVSG will be funded.**

Presenter: Brian Hancock, Research Specialist, EAC NOTE: Reading the testimony of Brad King.

Mr. King stated that in Indiana voting, voting systems are certified for marketing, sale and use by Indiana Election Commission. To obtain certification in Indiana, a voting system vendor must submit an application with extensive technical information about the voting system and pay a fee. In addition, to obtain certification a vendor must successfully demonstrate its system to the Commission and document the escrow of the voting system's software, firmware, source codes, and executable images with an escrow agent approved by the Election Division.

Evolving voting system standards can be useful if they address perceived gaps or ambiguity in current standards, address emerging technologies and improve the voting system certification process. Certainly one area that could be addressed is communication. Indiana has experienced difficulty due to the high turnover in the position responsible for voting system certification issues within the vendor's organization. The vendor loses the opportunity to effectively complete the certification process and may lose sales. The state runs the risk that the vendor will actually sell and deliver uncertified voting equipment in Indiana.

Therefore, the standards should make the vendor responsible for designating one individual within its organization to be the point of contact with the states on certification issues and to develop internal education programs within the vendor's organization to ensure ongoing monitoring of the impact of new federal voting system standards on the products and marketing activities of the company. This would reduce the risks to both the vendor and the states in a proactive, rather than reactive, manner and, hopefully, lead the vendor to put greater value on this important function

within its organization and encourage the vendor to promote stability and institutional memory at that position.

Change management has been a major contributor in the success of our implementation of a statewide voter registration system. EAC should consider the change management aspects of adopting new standards and adopting change management as part of the adoption and implementation of the new standards.

The plan to implement new voting system standards must recognize the reality of the election cycle. Our deadlines to implement most provisions of HAVA were fixed by federal law. However, the adoption and implementation of voting systems standards must be timed to produce the least possible disruption to what has become a continuous election process. Implementation of future standards should avoid implementation during, or shortly before the start, of a general election year.

Turnover among state and local election administrators also requires ongoing training efforts. NASED and the Election Center should continue to play an important role in educating their own membership with regard to the adoption of new voting system standards as well as providing basic education for newcomers about the fundamental principles embodied in the recently adopted 2005 voting system standards.

Mr. King concluded the adoption and implementation of voting system standards without adequate funding to accomplish significant changes to voting systems will ultimately be self-defeating. Local election officials will continue to find more pressing priorities demanded by their voters than what voters perceive to be an incremental improvement to the voting system that they use. Both voters and election administrators will need the education provided by the training programs I described earlier to convince them of the importance of spending money to implement these types of changes.

Questions and Answers:

In response to questions from the Commissioners and EAC senior staff by Ms. Noren reported that the EAC may need to create management guidelines for small jurisdictions. NIST, EAC, the vendors the state, and local governments need to start working on testing, HASH marks, and training. The local election officials should go to national meetings and most local jurisdictions have annual training.

Mr. Groh reported that EAC should consider testing only the new component to the new guidelines.

Mr. Hancock reported the FEC came out with their standards document in 2002. NASED produced a policy in early 2003 which allowed the current systems to be tested up to a certain point, under the 2002 standards.

Adjournment:

Chairman DeGregorio adjourned the meeting at 12:50p.m.