

Minutes of the Public Meeting United States Election Assistance Commission

1225 New York Avenue, NW
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Washington, DC 20005

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Thursday, September 18, 2008. The meeting convened at 9:01 a.m., EDT. The meeting was adjourned at 2:03 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 9:01 a.m.

Pledge of Allegiance:

Chair Rodriguez led all present in recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

General Counsel Julie Hodgkins called roll of the members of the Commission and found present: Chair Rosemary Rodriguez, Vice-Chair Donetta Davidson, Commissioner Gracia Hillman. Three members were present for a quorum.

Senior Staff:

Executive Director Thomas Wilkey; General Counsel Julie Hodgkins; Chief Operating Office Alice Miller

Presenters:

Brian Hancock, Director, Voting System Certifications, U.S. Election Assistance Commission; Susan McRill, Administrative Manager, Michigan Department of State, Bureau of Elections; Merle S. King, Director, Center for Election Systems, Kennesaw State University; Edgardo Cortes, Acting Director, HAVA Payments and Grants, and Election Administration Improvement Programs, U.S. Election Assistance Commission; Karen Lynn-Dyson, Director of Research, U.S. Election Assistance Commission;

R. Doug Lewis, Executive Director, National Association of Election Officials, The Election Center

Adoption of the Agenda

Chair Rodriguez asked for a motion to adopt the agenda. Commissioner Hillman moved to adopt the agenda. Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time Commissioner Hillman pointed out a spelling correction from “formally” to “formerly” with respect to the consideration of draft working group policy. The motion carried unanimously.

Welcoming remarks

Chair Rodriguez welcomed all in attendance, noting that the length of the meeting was due to the number of business items that needed to be addressed along with the highly anticipated workshop on “Preparing for Election Day 2008: Empowering Voters.” Chair Rodriguez pointed out that Mr. Wilkey would be addressing a late-breaking issue during his report.

Old Business

Approval of the minutes

Chair Rodriguez asked for a motion to approve the minutes of the July 21, 2008, meeting. Vice-Chair Davidson moved to adopt the minutes. Commission Hillman seconded the motion. The motion carried unanimously.

Chair Rodriguez asked for a motion to approve the minutes of the August 5, 2008, meeting. Commissioner Hillman moved to adopt the minutes. Vice-Chair Davidson seconded the motion. The motion carried unanimously.

Report from the Executive Director

Tom Wilkey extended a welcome to all in attendance, noting that it is only 47 days out from the election and the Commission is busier than ever preparing for a high turnout.

Mr. Wilkey reported that the following activities have taken place since the August 5, 2008, meeting:

Under Election Administration, the new Voter’s Guide to Federal Elections were sent to each jurisdiction in the country at the beginning of the week. The Guide has been translated into Spanish, Chinese, Japanese,

Vietnamese, Korean and Tagalog and will be sent to election officials in jurisdictions covered by the language assistance program provisions of the Voting Rights Act. The Voter Information Website Study, which will be released in the coming days, will also be available on EAC's Website, along with a fact sheet summarizing the report.

Under HAVA Funding, FY 2008 requirements payments were recently dispersed to North Dakota and Colorado; payment requests for Indiana and Montana are being processed. A letter to states updating them on the status of FY 2008 requirements payments, which is also available on the Website, was recently sent. The following two funding advisory opinions were recently issued: Advisory opinion FAO 008-006 concerning how funds acquired through the sale of HAVA-funded voting equipment may be used; and, Advisory Opinion FAO 008-007 addressing questions involving state grants and subgrantee decisions about voting equipment.

Under Research, the Commission is awaiting final OMB approval of the Election Day Survey instrument. Templates that will be used to collect the data are in the process of being developed and will be provided to participating states within the next several weeks.

Under National Voter Registration Application (NVRA), changes to Nevada's form were made as requested and the updated form has been posted on EAC's Website.

Under Testing and Certification, a letter from EAC to SysTest Labs and a letter from NVLAP to SysTest Labs is available for viewing on EAC's Web site.

The Commission conducted the following eight tally votes, all which were unanimous: Advisory Opinion FAO 08-006, Advisory Opinion FAO 08-007, Federal Register publication of changes to HAVA state plans, updates to Nevada State instructions on the NVRA, 2008 HAVA requirements payments to North Dakota, Federal Register publication of changes to Georgia's State plan, adoption of the Voter Information Website Study and publication of final rules on Freedom of Information, Privacy Act, Government in the Sunshine, testimony by Commission employees related to official information and production of official records in legal proceedings, standards of conduct for Commission employees and nondiscrimination on the basis of handicap in programs or activities conducted by the EAC.

Under Website updates, a Real Simple Solution (RSS) feed which will automatically alert users each time an update has been posted to EAC's homepage is now available. Chair Rodriguez's two statements regarding voter registration, Commissioner Hillman's statement on EAC's voting

system certification program and a list of all state voter registration deadlines for the November elections are available for review on the Website.

Mr. Wilkey alerted the Commission that the Social Security Administration has scheduled its annual national computer center building shutdown for October 10-13, 2008. Chair Rodriguez will be sending a letter to the Social Security Administration urging them to consider rescheduling the shutdown due to the fact that this is a critical weekend for many states who have voter registration deadlines. Copies of the letter will be sent to the American Motor Vehicle Association, the National Association of Secretaries of States and the National Association of State Election Directors.

Mr. Wilkey concluded his report to acknowledge and thank Commissioner Hillman for the Election Day readiness checklist she compiled since the August 5, 2008, meeting which is being utilized and has been found to be a very helpful tool.

Consideration of Advisory Opinion Regarding Maintenance of Effort, Pursuant to HAVA Section 254(a)(7)

Chair Rodriguez was pleased to announce that the highly anticipated meeting with the Office of Management and Budget (OMB) was held earlier in the week to address the ongoing topic with respect to previously issued OMB circulars pertaining to Maintenance of Effort (MOE), and it appears that several obstacles to a decision have been cleared away.

Counsel Hodgkins provided an overview regarding the deliberations that took place with respect to the five questions that were raised by the Commission. Counsel Hodgkins also reviewed the three major funding programs that are in place under HAVA.

Commissioner Hillman outlined the following seven principles that the Commission will use when revisiting/amending the existing advisory on Maintenance of Effort:

1. EAC acknowledges and understands that HAVA requirements payments are grants and the states are the grantees.
2. EAC acknowledges that states may sub award or sub grant HAVA funds to counties and units of local government, and those units of local government may also subaward funds.
3. Maintenance of Effort is a requirement of HAVA Section 254(a)(7).

4. States are responsible for Maintenance of Effort under HAVA Sections 253 and 254(a)(7).
5. State plans shall contain a description of the state's Maintenance of Effort as required under HAVA Section 254(a)(7).
6. States are responsible for making certain that subawardees document Maintenance of Effort. Federal circulars grant requirements, such as Maintenance of Effort, pass the counties and units of local government with the subaward of funds
7. EAC has a responsibility to provide guidelines, definitions, direction, explanations, monitoring and oversight to make certain that the Maintenance of Effort requirements of HAVA are being properly implemented by the states.

Chair Rodriguez requested that staff provide an analysis of the seven outlined principles with respect to how they stand against the previous comments regarding this matter and to place this item on the December meeting agenda for further consideration.

Consideration of Final Policy for Notice and Public Comment

Commissioner Hillman presented the Commission with the final version of the "Notice and Public Comment Policy," pointing out that the only comment submitted on final was from the National Association of State Election Directors (NASED) who requested clarification on the policy formation process.

Commissioner Hillman made a motion to adopt the final version of the Notice and Public Comment Policy. Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time Vice-Chair Davidson raised a concern regarding the intent/clarity of Section V C pertaining to "Equal Ability to Comment." Commissioner Hillman agreed to speak with Counsel Hodgkins regarding amending this section and to defer further discussion/voting on the policy until later in the meeting.

Consideration of Draft Working Groups Policy

Commissioner Hillman was pleased to present the Commission with the "Proposed Working Groups Policy," requesting that the Commissioners review and provide any additional principles it feels should be included in the final draft, which will follow the steps as prescribed in the Notice and Public Comment Policy. Commissioner Hillman recommended that the

vote to publish the draft be conducted via a tally vote in order to publish the policy by mid October as opposed to waiting until the December meeting.

Best Practices to Ensure Voting Systems Perform Accurately and Securely on Election Day

Presenter: Brian Hancock, Director, Voting Systems Certifications, U.S. Election Assistant Commission

Mr. Hancock addressed the Commission to speak briefly regarding the importance of voting systems performing accurately and securely on Election Day and how the EAC has addressed this topic by producing the following two documents: (1) The Quick Start Management Guide on Ballot Preparation, Printing and Pre-election Testing published in September of 2006; (2) The chapter of the Election Management Guidelines entitled "Pre-Election and Parallel Testing," which has been posted on EAC's Web site, is currently being formatted for printing, along with the other chapters of the Guidelines, and will be distributed to 6,000 state and local election officials across the country.

Presenter: Susan McRill, Administrative Manager, Michigan Department of State, Bureau of Elections

Ms. McRill provided detailed testimony regarding the following three areas:

1. How Michigan administers its elections.
2. How Michigan conducts pre-election logic and accuracy testing of optical scan voting machines.
3. Michigan's ballot production standards.

Ms. McRill was pleased to announce that a copy of Michigan's Ballot Production Standards, which was released the previous month, was being forwarded to all Secretaries of States by the end of the week, pointing out that the Standards go into great detail regarding voting instructions, font size, ink specifications, office headings, party vignette instructions, write-in votes, in addition to summarizing the technical requirements that are specific to each of the three optical scan systems that are utilized in Michigan.

Questions and Answers:

In response to comments/questions by the EAC Commission:

Ms. McRill provided clarification regarding the following areas: The public's involvement with regard to logic and accuracy testing, what Michigan's timeline is for certifying ballots back to the counties, the type of advice/guidance that's given to officials following an upgrade to a voting system, whether every system used in an election is tested, whether equipment is tested to failure and where she acquired her expertise.

The Commission recessed at 10:44 a.m. and reconvened at 11:00 a.m.

Presenter: Merle S. King, Executive Director, Center for Election Systems, Kennesaw State University

Dr. Merle King opened his testimony by commending the EAC for the release of the Quick Start Guides, noting that they have been well received by election officials and are being promoted for use at the state level.

Dr. King provided detailed testimony regarding how Georgia conducts pre-election testing for their direct recording electronic (DRE) voting system, the three types of testing that are integrated into pre-election testing and how it impacts and improves logic and accuracy testing in Georgia.

Questions and Answers:

In response to questions by the EAC Commission:

Dr. King provided clarification regarding the following areas: What steps Georgia takes to ensure that any upgrades made to its voting systems are correct prior to conducting pre-election logic and accuracy testing, how legitimate questions that are raised about the testing that is done to voting systems are responded to, the calibration mechanisms of voting systems, whether voting machines are tested to failure and the conducting of acceptance testing on both new equipment and upgrades to existing voting systems.

Consideration of Final Policy for Notice and Public Comment (Cont'd)

Commissioner Hillman presented the Commission with the amendments that were incorporated into the Policy for Notice and Public Comment, per Vice-Chair Davidson's recommendation for the purpose of clarifying Section 5 C "Equal Ability to Comment." Vice-Chair Davidson expressed her appreciation to Commission Hillman for her willingness to make the changes as outlined. The motion to adopt the Policy for Notice and Public Comment carried unanimously.

New Business:

Update on Final Administrative Regulations and Consideration of Proposed Administrative Regulations

Counsel Hodgkins was pleased to announce that the first two set of administrative regulations, which were adopted by the Commission via tally vote, covering Freedom of Information Act, the Government in Sunshine Act, Privacy Act, production of witnesses and documents in third-party litigation, standards of conduct for Federal employees and non-discrimination on the basis of handicap in EAC programs were submitted to the House Administration and Senate Rules Committee and the Federal Register for final publication.

Counsel Hodgkins was also pleased to present the Commission with the third, and final, set of administrative regulations covering non-discrimination in Federal financial assistance programs that are offered by EAC, pointing out that included in the packet of materials was a codification of Circular A-102, which is the Common Rule. Counsel Hodgkins reported that the regulations will need to go through the Paperwork Reduction Act process, in addition to two 60-day comment periods. Comments will be received via email at havainfo@eac.gov and federalportal@regulations.gov, via physical mail at 225 New York Avenue, N.W., Suite 1100, Washington, D.C. 20005 and via fax at 202-566-3128.

Commissioner Hillman made a motion to adopt for publication the administrative regulations covering non-discrimination in Federal financial assistance programs offered by the EAC. Vice-Chair Davidson seconded the motion. The motion carried unanimously.

Update on the 2008 Obligation Requirements

Counsel Hodgkins addressed the Commission to provide an update on the steps that are being taken by the Inspector General to respond to the Government Accountability Office (GAO) questioning EAC's distribution/obligation of the \$115 million in HAVA requirements payments appropriated by Congress for FY 2008. Counsel reported she was informed by GAO they will be releasing their opinion by September 30, 2008. Counsel also pointed out that the Office of Legal Counsel with the Department of Justice has been notified of this matter and will be available if necessary depending on GAO's opinion.

Consideration of Comments Received on the Draft EAC Guidance to States Regarding Updates to State Plans

Presenter: Edgardo Cortes, Acting Director, HAVA Payments and Grants, and Election Administrator Improvement Programs, U.S. Election Assistance Program

Mr. Cortes presented the Commission with a summary of the six comments that were submitted by the State Boards of Election in Kentucky, North Carolina and Maryland, NASED, Verified Voting Foundation and the California Secretary of State's Office with respect to EAC's guidance regarding material changes to state plans that it adopted at its July 21, 2008, meeting. Mr. Cortes also provided a summary of the responses to the comments that were recommended by staff.

Mr. Cortes reported that staff would make the revisions as discussed and the guidelines would be placed on the October 7, 2008, agenda for the Commission's consideration.

The Commission recessed at 12:36 p.m. and reconvened at 1:13 p.m.

Consideration of Adoption of the Alternative Voting Methods Study

Presenter: Karen Lynn-Dyson, Director of Research, U.S. Election Assistance Commission

Ms. Lynn-Dyson was pleased to present the Commission with the findings from the Alternative Voting Methods Study, conducted by The Election Center under a contract for the U.S. Election Assistance Commission, along with the findings that were gathered by EAC's Research Department staff regarding the advisability of a uniform poll closing time across the United States. Ms. Lynn-Dyson noted that these studies were conducted pursuant to Section 241(b)(10) of HAVA which requires the EAC to study "the feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time and establishing (A), a legal public holiday under Section 6103 of Title V, the United States Code, as the date on which the general elections for Federal office are held. Also (B), the Tuesday next after the first Monday in November, in every even numbered year, as a legal public holiday under such section. And (C), a date other than the Tuesday next after the first Monday in November, in every even numbered year the date on which general elections for Federal office are held. (D) any data described in subparagraph (D) as a legal public holiday under such section."

Ms. Lynn-Dyson provided an overview of the process that was utilized to review and vet the study with various key stakeholders.

Ms. Lynn-Dyson commended The Election Center for its successful efforts in collecting the data contained in the study, and recommended that the Commission adopt the study, pointing out that it will serve as valuable tool for all election officials who are experimenting with non-traditional voting methods.

Presenter: R. Doug Lewis, Executive Director, National Association of Election Officials, The Election Center

Mr. Lewis addressed the Commission to present in detail the findings contained in the study, which were gathered by The Election Center through a series of case studies, about early voting, Election Day holidays, vote-by-mail, vote centers, weekend voting and voting in Puerto Rico.

Commissioner Hillman made a motion to adopt the Alternative Voting Methods Study. Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time Mr. Lewis responded to several questions raised by Chair Rodriguez, Commissioner Hillman and Vice-Chair Davidson, in addition to providing a recommendation regarding EAC's use of the report. The motion carried unanimously.

Announcement of October 7, 2008, Public Meeting Agenda Items

Chair Rodriguez announced that to date the following topics would be addressed at the October 7, 2008, meeting: A consideration of the EAC guidance regarding material changes to state plans, discussion of revisions to advisory opinion process which is being prepared by Mr. Cortes, consideration of the draft working group policy as proposed by Commissioner Hillman and consideration CIBER's accreditation, as recommended by NVLAP.

Commissioners' Closing Remarks

Chair Rodriguez's noted that the Commission would be eagerly awaiting both the GAO opinion on the appropriation issue, in addition to a response from the Social Security Administration regarding the scheduled shutdown of its online system services.

Meeting was adjourned at 2:03 p.m.