

United States Election Assistance Commission

Meeting Minutes – June 30, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Thursday, June 30, 2005 at 9:30 a.m. in New York, New York at the Marriott Hotel, 1535 Broadway.

Call to Order: Chair Hillman called the meeting to order at 9:30 a.m.

Pledge of Allegiance: Chair Hillman led all present in the Pledge of Allegiance.

Roll Call: Chair Hillman recognized Juliet Thompson, EAC General Counsel, who called the roll and in addition to the Chair, found present Vice Chairman Paul DeGregorio and Commissioner Ray Martinez, III.

Opening Remarks: Chair Hillman recognized John Ravitz, Executive Director of the New York City Board of Elections. Mr. Ravitz welcomed EAC to New York City, reminisced about his earlier career as a New York Assemblyman, reported on New York's ongoing efforts to comply with HAVA mandates, and congratulated EAC Executive Director Tom Wilkey on his new appointment

Adoption of Agenda: Chair Hillman recognized Vice Chairman DeGregorio, who moved to adopt the agenda for the meeting of April 26, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

Adoption of Minutes: Chair Hillman recognized Commissioner Martinez, who moved that EAC adopt the minutes of the commission meeting held on March 22, 2005. The motion was seconded by Vice Chair DeGregorio and carried unanimously.

Updates and Reports: EAC Vice Chairman DeGregorio and Commissioner Martinez provided an update on the Help America Vote Act (HAVA) Title II requirements payments. Vice Chairman DeGregorio commented that it was a pleasure to be present in New York City and New York State, and thanked Mr. Ravitz for his opening remarks. The Vice Chairman recognized the pressures working upon the New York State Board of Elections, and noted that steps forward had been made. The Vice Chairman expressed the hope that EAC could aid the New York State Board of Elections by sharing information from other jurisdictions also endeavoring to introduce changes in order to comply with HAVA.

The Vice Chairman commented that to his amazement and appreciation 14,000 citizens were served by 72 poll workers in the polling place in the Bronx that he visited last November during the General Election, constituting one of the largest polling places in America. The Vice Chairman noted that he had observed the primary elections in upstate New York. The Vice Chairman recognized the presence of Onondaga County Board of Elections Commissioner Edward Szczesniak.

The Vice Chairman stated that EAC is approaching the end of the requirements payments disbursement process. The process of disbursing money to the States, District of Columbia, and the several territories began on June 9th, 2004. A total of 55 entities receiving disbursement payments, and EAC had \$2.3 billion to distribute. The EAC is down to the last \$115 million of that \$2.3 billion. The EAC had disbursed \$169 million to the State of California, \$2.3 million to the Territory of Guam, and \$153 million to New York State for fiscal years 2003-2004.

Commissioner Martinez noted that all 55 jurisdictions covered by HAVA had received all of their 2003 requirements payment. Forty-eight of the 55 jurisdictions eligible for 2004 Title II requirements payments had received their disbursement, leaving seven jurisdictions eligible for the approximately \$115 million remaining. The EAC remained in touch with all seven jurisdictions, Michigan and Texas, had sizable 2004 requirements payments remaining to be disbursed. Most of the remaining jurisdictions are waiting for their State to appropriate the 5% match. The EAC is working with all seven jurisdictions to distribute the money in a timely fashion so it can put it to good use.

Chair Hillman stated that the EAC has been working very diligently on the proposed Voluntary Voting System Guidelines (VVSG). The appropriate notification was sent to the Federal Register so that the 90-day public comment period can begin.

Carol Paquette, the former Interim Executive Director, and now working with the EAC to help finalize the guidelines, gave a report and update on the VVSG. Ms. Paquette stated that section 202 of HAVA directs the EAC to adopt a VVSG and to provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited test labs, among many other duties that are assigned to the Commission. To assist EAC with the voting system guidelines work, HAVA provides for the establishment of a body of subject matter experts, called the Technical Guidelines Development Committee (TGDC). HAVA

specifies that the 15 person TGDC is drawn from a variety of organizations that have particular expertise and interest in the subject matter, such as the National Association of State Election Directors (NASED), the Access Board, the American National Standards Institute and the IEEE, among other organizations. The TGDC is chaired by the Director of the National Institute for Standards and Technology (NIST). NIST is charged with providing technical support to the work of the TGDC. The EAC has provided nearly \$3 million in fiscal year 2005 to fund the TGDC and NIST work. Under HAVA the TGDC is tasked with developing initial recommendation for voting system guidelines and providing them to the EAC. The TGDC and NIST worked very diligently for nine month time provided by HAVA, and on May 9, 2005 provided the initial set of recommendations for the Commission to review. The TGDC recommendations augmented the 2002 Voting System Standards (VSS), particularly in the area of accessibility, usability and security of voting systems. This includes new requirements for accessibility, voting system software distribution, voting system setup validation and use of wireless.

In recognition that several states have enacted legislation requiring Voter Verified Paper Audit Trails (VVPAT), the guidelines include performance specifications for this capability. For Federal system certification purposes, the VVPAT are optional. A paper audit trail is only one of several technical approaches to provide voters an additional means to the DRE summary screen to verify their ballot choices.

The EAC expects to be working with the TGDC and NIST to develop similar specifications for audio, video and cryptographic solutions that provide comparable capabilities for voter verifiability.

The EAC has been performing due diligence, thoroughly reviewing the recommendations and preparing it for presentation for public comment. The review included a legal analysis of the guidelines to ensure that all the aspects are fully in compliance with HAVA. This resulted in some changes in the accessibility provisions. For example in requirement 2.2.5, regarding accessible voting systems, and if the procedure for voters is to submit their own ballots, the EAC changed the requirement from a 'should' to a 'shall', so voters who are blind are able to perform the activity independently; manipulation of the ballot in the same way as a sighted voter.

Selected portions of the VVSG have been revised to reflect the new EAC process for national certification of voting systems, by adopting the sections that describe the previous NASED qualification process. The EAC also made updates throughout the document to reflect new HAVA terminology.

The Federal Register notice was published on June 29, 2005, starting the 90-day public comment period. Copies of the notice were available on the sign in table. The notice provides a full description of the various ways the public can comment and obtain copies of the guidelines. The guidelines are available on the EAC website in PDF and HTML, compatible with assistive technologies that can read it; and on request in paper form or CD-ROM. EAC will hold three hearings on the guidelines, one immediately following the public meeting; a second on July 28, 2005 at the California Institute of Technology; and a third in August in Denver.

Chair Hillman asked Ms. Paquette if she could explain what somebody who is viewing the document on the EAC website can expect.

Ms. Paquette answered that the document is about 250 pages, for ease of use it is posted so viewers can download it in its entirety; each volume separately, and each section of the volume independently. It is also available in other media for people who wish it.

Commissioner Martinez commented that the publication of the draft VVSG represents one of the most significant accomplishments of this new agency. The EAC has been around for 18 months. In addition to distributing funds, something the EAC has been doing since the day the commissioners were officially appointed is the development of the guidelines. The publication of these proposed guidelines is a significant step forward. Commissioner Martinez applauded the EAC staff, TGDC, and NIST for the fine work completed.

Commissioner Martinez asked about then commented on what the EAC is doing in terms of its internal process to analyze the initial recommendation and move forward with publishing the draft VVSG. EAC internally, for the past six or seven weeks, had been doing the type of due diligence that any Federal agency ought to be conducting, when in receipt of such a highly technical document. The EAC internal process revolved around legal counsel analyzing the recommendations to ensure conformity with HAVA. Any

changes or departures between what the EAC published versus what was initially delivered by the TGDC is a result of the due diligence legal analysis.

Ms. Paquette commented that the legal review for compliance with HAVA has been substantive work. The EAC went through the document to change terminology to what is used in HAVA. The VVSG is going to be adopted by the Commission after it considers the comments provided over the summer. It will be a document used for the national certification and, if adopted by the States, for State certifications of voting systems. The VVSG will have some significant duration of life. It includes a high level description of the new voting system certification process that the EAC will be soon be transitioning from NASED. Based on the many expected comments this document will be undergoing further changes, but the EAC wanted to start with a common set of terminology.

Commissioner Martinez clarified that the thrust of the EAC due diligence for the past six or seven weeks has been legal analysis on the requirements. Legal analysis was not conducted by the TGDC.

Ms. Paquette responded that at the final plenary session of the TGDC, the TGDC requested a legal analysis be performed to ensure that the provisions being put forward were fully in compliance with HAVA. Under EAC responsibility as interpreter of HAVA, it would do legal review.

Commissioner Martinez said full public view is important so the public can see what was given to the EAC, in the form of initial recommendations by the TGDC, versus where the EAC ends up in its final adoption of these guidelines. The Commissioner then asked if there is a requirement in HAVA that the EAC also simultaneously publish the initial recommendations that came to the EAC from the TDGC.

General Counsel Thompson answered that Section 221(f) of HAVA directs the TGDC to publish the recommendations at the time that the EAC adopts the VVSG.

Vice Chairman DeGregorio commented that the TGDC went through a nine month period to come up with the document. All commissioners are committed to get the process implemented in a timely manner. The EAC worked very hard to get the members of the TGDC appointed in a timely basis, beginning its work on July 9th and completing it on May 9th. There were standards issued in 1990, and updated 12 years later in 2002, by the Federal Election

Commission called Federal Voting System Standards (VSS). Now the EAC is updating, augmenting and improving on the 2002 standards. The Vice Chairman thanked the members of the TGDC, some in attendance, all who worked very hard, and to the staff at NIST who supported them in this process. The EAC made it very clear from the beginning it wanted to follow, and did, a process that was dictated by HAVA. It was done and will continue in a transparent way. The EAC is beginning the 90 day process to have public hearings and public comment about the VVSG. The Vice Chairman asked how the public comment period will work; and how transparent will it be; and when people make comments, how will that be affected, how it will get on website, and how will that be brought to the EAC and public's attention so that it is done in a very transparent manner?

Ms. Paquette answered that the document is posted on the EAC website with an on-line comment form that accepts attachments. The public could be reading the document in one window and commenting on the other. The comments go into a database. The EAC has an obligation to review the comments for inappropriate language and other inappropriate comments; but all comments will be posted on the website for all to see. The EAC has also established a special e-mail box:

votingsystemguidelines@EAC.gov. The EAC will also accept comments by mail. The EAC address is listed in the Federal Register Notice and the EAC website. The EAC would like the comments to be specifically addressed to Voting System Guidelines Comments, so that it can be rapidly sorted and appropriately treated. Whatever means the comment comes to the EAC it will ultimately be posted in that data base and available for anyone to review.

Vice Chairman DeGregorio stated that the TGDC continued to receive comments after its cutoff date for producing the initial set of draft recommendations. The Vice Chairman asked if the EAC will receive any comments that people made to the TGDC since that period.

Ms. Paquette answered that the comment period on the TGDC draft, ended a week or so before the April plenary meeting in order to prepare the materials for that meeting. The EAC received from NIST the comments they have received up until, about a month ago. The EAC has those comments, on the body and the expanded glossary. The EAC will continue working with NIST, if they continue to receive comments that the EAC needs to consider.

Chair Hillman stated that document is an incredible piece of work and the EAC is pleased to be able to hold the first hearing. The Chair emphasized how incredible in one year time, given all the start-up challenges of the Commission, to disburse over \$2.2 billion in funds to the States. A lot of people in the public and voters do not understand the incredible amount of money the Federal Government made available to States to be in compliance with HAVA. The Chair thanked her two colleagues, who were serving as a task force to work with staff; EAC staff, in particular, Margaret Sims, for the incredible amount of work she did as a one-person office, to process all of the requirements payments, which meant reviewing materials from the States in some instances States received two payments at different times. The General Services Administration, was very cooperative and moving the funds quickly.

The Chair introduced the report on Statewide Voter Registration List Guidance. The Chair also stated she enjoys looking out at the meetings and seeing people who are interested enough in the EAC work to attend the meetings, listen to what is said, hopefully visiting the EAC website, and helping with the diligence on the responsibilities assigned to the EAC. The Chair asked the General Counsel to explain why the EAC is referring to guidance on the statewide vote registration list (SVRL), but guidelines on the voting systems.

Ms. Thompson gave a report on the progress of the guidance that the EAC is issuing on SVRL. Under Section 311 of HAVA, the statute gives the Commission the authority and requirement, of issuing interpretive guidance to the provisions of Title III of HAVA, including the requirement that States "implement a statewide voter registration list." In April of 2005, EAC published in the Federal Register a proposed guidance on the SVRL. The document was developed through a working group of State and local election officials, representatives from the Department of Justice, technology experts and a partnership with the National Academy of Sciences. There was a 30 day comment period that followed publication, which is now closed. The EAC received over 300 comments that were high quality from State and local election officials, from community interest groups and from individuals.

Primarily the State and local election officials were interested in the architectural structure of the databases and the language of HAVA. The terms top-down and bottom-up makes reference to the architectural structure of the database. In a top-down system

the State controls the main database information is fed through either dumb terminals or other access points through the local election officials. The State has the ability to perform list maintenance, to coordinate with other state databases and to verify registrations through the Department of Motor Vehicles and, if necessary, through the Social Security Administration. In the bottom-up approach, data is received up from databases at the local level into a central data base that is housed at the State level.

The State and local election officials also commented on the language of HAVA, its mandates and the mandates of the National Voter Registration Act. The community interest groups provided comments on what was not included in the guidance. The groups focused on issues, such as database security. The EAC has continued to work with the National Academies, on developing security guidelines and security protocols that will assist States. The groups also focused on list maintenance and verification, to assure that when the tasks are performed, there are matching protocols that make sense, are non-discriminatory, and produce good results in terms of accepting voters or removing voters, when appropriate. The EAC is in the final stages of reviewing the over 300 comments and will have a product for review in the next week or so. After there has been a consensus around the idea of what the final guidance will look like, it will be published in full in the Federal Register, along with an analysis on a categorical basis of the comments received. The EAC will produce a booklet which will excise some of the technical language that goes into the Federal Register Notice, but contains all of the guidance available to the public, to the states, to whoever desires to have a copy.

Vice Chairman De Gregorio commented that many States are facing the January 1, 2006 deadline on implementation. New York is going to try very hard to meet the deadline. The Vice Chairman asked if the guidance when published be beneficial for the long term for the States to provide matches, other information needed to have the voter registration lists, and to provide people with every opportunity to cast a ballot?

Ms. Thompson answered absolutely. The EAC goal is to develop guidance that would inform the states during the development of their voter registration databases, help them form the processes used for years to come.

Commissioner Martinez clarified a couple of the procedural aspects. The EAC has been trying to fulfill the service aspect of what the agency ought to be with regard to the primary

stakeholders. The EAC is an entity that provides Federal funding to States to help implement the uniform administrative requirements in Title III. The Agency has an obligation to ensure that it works with the States in a partnership to ensure that there is an understanding as to how to implement the administrative requirements. States are given great latitude in how to achieve the end result. States need a Federal agency to assist them in making sure that if there are ambiguities in any particular sections of HAVA that the EAC can clarify. For example, the EAC had one working group meeting with State and local election administrators to help arrive at an initial draft of language for this guidance. Another follow-up meeting, again under the umbrella of the National Academy of Sciences, where the EAC invited policy makers and information technology experts, who do not normally sit around the same room with each other to talk about an important objective of building a statewide voter registration database. The group discussed some of the technical difficulties dealing with privacy and security concerns.

Ms. Thompson responded that the EAC will adopt voluntary guidance to each of the sections of Title III. It is vitally important those involved in the election administration process wholeheartedly adopt them. The EAC has taken steps to ensure that those officials are involved in the process in the beginning continuing through with the technical working group to work on more of the specific technological issues.

Chair Hillman commented that voter registration is what elections are all about, a pinnacle of democracy in this country. Many groups and individuals are concerned with the integrity of voter registration lists because people feel they were supposed to be registered, showed up to vote, but their names were not on the list. The EAC is making every effort to keep groups and individuals fully informed of the progress and help them see the relevance of this document against the work done in their community. The Chair asked other than the Federal Register Notice, how will groups know when the final guidance has been published?

Ms. Thompson answered that the EAC will put the guidance up as a permanent feature on the website; distribute it to key stakeholders so they will be aware that this document is available; and anyone is welcome to write the EAC and ask for a copy.

Chair Hillman acknowledged the presence of the following key EAC partners and thanked them for attending:

- Two members of the 37 member EAC Board of Advisors Wes Kliner and Sharon Turner-Buie. Ms. Turner-Buie is also Director of Elections for Kansas City, Missouri, and also serves as a member of the TGDC.
- Executive Director of the National Association of Secretaries of State, Leslie Reynold.
- EAC Standard Board Member Ed Szczesniak.
- Department of Commerce and NIST, Craig Burhardt and Allan Eustis.
- Department of Justice Brian Heffernen and Chris Herren, who work on compliance.
- Election Systems at Kennesaw State University in Georgia and TGDC member Brit Williams.

Chair Hillman then announced that the public hearing would begin at 11:00 AM. It is the EAC's first hearing on the proposed VVSG. There will be a lunch break at about 12:30 for one hour, with the hearing ending about 5:00 PM.

Executive Director Wilkey commented that it is great to be home for a day. The city means a great deal to him; the folks at the New York City Board of Elections and he have a long history of working together. The Executive Director then thanked Director Ravitz for his opening comments. The NYC Board has a great deal ahead of them in the next year. Mr. Wilkey then reminded them that he was here on that fateful day of September 11th. On that very next day the City Board of Elections met to reschedule and redo an election in less than two weeks. After that, did three more elections before November 6th. If they can do that they can do anything they set out to do. They will have a lot of support behind them.

Executive Director then acknowledged the former President of League of Women Voters, Marion Sinek and others from the City Board; and Vice Chairman of the State Board of Elections, Carol Berman.

Executive Director Wilkey said this is a great opportunity. In the nine days he has been on the job, he already discovered what a remarkable and very dedicated staff of people he joined, and that the three Commissioners are a real joy to work with. He is looking forward to being with them and working with them shoulder to shoulder.

Commissioner Martinez moved to adjourn the meeting; Vice Chairman DeGregorio seconded the motion. Chair Hillman adjourned the meeting at 10:35 AM.