

Electronic Ballot Counting Device Advisory Committee
Meeting Minutes of September 14, 2009 at 9:30 AM
71 South Fruit Street, Concord, NH, HAVA Conference Room

Attendance:

Thomas Manning, Assistant Secretary of State
and Temporary Chair
Walter Fries, Moderator, Danville
Representative Suzanne Harvey
Representative Richard Drisko
Representative Robert Perry
James Tetreault, Town Clerk, Winchester
Anthony Stevens, Assistant Secretary of State

I. Call to Order

Temporary Chair Mr. Manning called the meeting to order at 9:40 AM. There was not an official quorum (6 member minimum for a quorum, 5 members were present at the time.) Representative Richard Drisko and James Tetreault arrived shortly after the call to order to make a quorum of 7 members.

II. Approval of Minutes: July 27, 2009

Mr. Manning asked for the committee to review the minutes of the July 27, 2009 meeting.

Mr. Stevens asked for clarification about Walter Fries' term "digital scanning" on page 2, paragraphs 2 & 4.

Mr. Fries stated there should be a digital record for the Secretary of State, in addition to over a thousand pages of election reports received from the towns and cities after each election. He favors mechanizing the process of election reporting by creating a software program for clerks to use for election night reporting. (He believes there should be a hand count on election night to first confirm the machines were counting correctly.) The Secretary of State could use this election reporting system to achieve a quicker reporting process. Mr. Stevens said the need is not for faster reporting, but for better reconciliation, which such a system could help encourage.

Mr. Fries wanted to clarify the term "procuring devices" on page 2, paragraph 5. He would like the state to end up with a basic ordering agreement with the device manufacturer. Mr. Fries said that the contract would be subject to indefinite quantity/delivery under which the state requires that all towns and cities be placed on a most-favored customer list, so that all towns and cities get the best price and conditions (protections) that the manufacturer/dealer offers to anyone.

Mr. Stevens noted the July 13th, 2009 Meeting Minutes first page footnote, have been revised as requested by the committee. John Silvestro of LHS, the state Diebold/Premier vendor, has informed the state that LHS can accommodate the staggered representative races and known state ballot requirements using the 1.21.5 version of GEMS election management software and the 1.96.13 Accuvote chip. According to Silvestro, the 1.96.13 Accuvote chip incorporates "all of the most recent revisions and is EAC certified to the 2002 standards."

Representative Perry asked whether (a) the 1.96.8 Accuvote chip addressed some of Harri Hursti's concerns, (b) did one version build on the other and (c) is the 1.96.13 version the final version that will be issued for this machine? Mr. Stevens replied that the 1.96.13 chip version reportedly incorporates the improvements in version 1.96.8. He noted, as far as he knows, August, 2009 was the first time the EAC had certified any Diebold/Premier voting system to the 2002 Voting System Standards.

At the committee's request, Mr. Stevens agreed to ask for further specifics regarding what Diebold/Premier has done to address the issues raised by Harri Hursti and California's Voting Systems Technology Assessment Board (VSTAAB) study dated February 14, 2006.

Representative Drisko mentioned he had read that ES&S has agreed to purchase Diebold's Premier Election Systems for \$5 million; there were about 180 employees involved.

Representative Perry observed that Diebold/Premier has been working on a new "OSX" ballot counting machine, relying on improved optical scanning technology. He had heard the purchase could affect a lot of things and wanted to know if ES&S might decide to shut down a Diebold product line such as this one. This might mean the towns and cities could not obtain updates and fixes to the existing equipment.

Mr. Stevens noted that our legislature makes changes to the ballot format in almost every election cycle, often calling for some accommodation on the part of the vendor software. He said the Schumer amendment and other factors will probably change ballot design over time; the forces of change have already been set in motion by other national trends aimed at uniformity, accessibility, and interoperability. The state's ability to respond might be curtailed by an ES&S decision not to fully support the Diebold/Premier product line.

Representative Drisko noted that shifting political sands can affect ballot design and said we need to weigh this information carefully.

Mr. Stevens noted technology might need to be changed with the Schumer Bill (S.1415), which has been inserted as an amendment to the federal Defense Appropriations Bill (S.1390), now in conference committee. It would force the clerks in all states to automate the sending of the absentee ballot, envelopes and instructions to all UOCAVA voters upon request.

Mr. Tetreault noted that the Schumer amendment was discussed at great length at the City and Town Clerk's Conference. He felt the technology is not in place for the electronic ballot transmission from the clerks' point of view.

Mr. Tetreault wanted the committee to know there were security issues involved with faxing the information. How would the clerk know the correct voter received the information and what would stop the person receiving the ballots from filling them out and mailing them back, with the voters they were destined for never receiving their ballots? (The ballot tracking provision in the Schumer amendment would enable voters to check the disposition of their request and whether their absentee ballot had been received by the clerk.)

Mr. Stevens observed that, under the Schumer amendment, a mish mash of thin paper ballots would be returned to the clerks; many would have identifying marks, and virtually of all of them

would move to a manual counting pile because of the thin paper they were printed on. He pointed out that, although the amendment currently does not extend beyond UOCAVA voters, all absentee voters may insist on equal treatment under the law. If all absentee voters win this same right, and regular absentee voters send back thin paper ballots, hand counting could rise significantly in general elections, placing pressure to obtain equipment that can scan ballots with different thicknesses (and potentially sacrificing the current protection provided by thick ballots that are harder to reproduce.) Such election management software and equipment might be available from only one vendor, ES&S, since Diebold/Premier's OSX product line might have been discontinued. This potential development may affect who services the new machines and how ballots are printed.

Mr. Tetreault said he believes many absentee voters are just not submitting their absentee ballot requests soon enough. When absentee ballots are in stock, his office provides a one-day turnaround for each absentee ballot request. He is under the impression most clerks operate within the same time frame. He noted during the Presidential Primary that he had one undeclared voter who did not declare a party when requesting his absentee ballot. Mr. Tetreault notified the voter by mail that he needed to declare a party for an absentee ballot in order to obtain a party ballot, and the request still came back as undeclared. (When examining statistics, this delay might be blamed on the clerk or the law, even when the clerk did everything properly, and the law correctly called for party identification in a primary.)

Mr. Fries pointed out that the Schumer amendment's process could sacrifice the secrecy of the ballot; anyone receiving a fax or hand counting the ballot could readily identify the name, organization, or fax number of the sender.

Mr. Fries asked if the Secretary of State had formally provided a response to Congress regarding the Schumer amendment or talked to Congressional staffers.

Mr. Stevens responded that the Department of State has critiqued the Schumer amendment in emails to all of New Hampshire's Congressional offices. Mr. Stevens observed that New Hampshire, due to the clerks' knowledge of and contact with their residents, has a great record in receiving back and counting absentee ballots that have been transmitted, in spite of the short window between the primary and general election. States with excellent records should not have to pay the price for others failures or have to reduce their standards to a lowest common denominator.

He expressed his discomfort that Congress was relying on old 2006 absentee ballot data when discussing this amendment, despite the fact that 2008 absentee ballot data that has not been released by the Election Assistance Commission might actually reveal better data collection, excellent statistical performance by states like New Hampshire, and major improvements by many states - possibly calling for a different policy direction.

Mr. Tetreault wished to be informed of the response from the offices of Senators Gregg and Shaheen when they received the clerks' petition opposing the idea of transmitting ballots and envelopes electronically.

Mr. Tetreault and Representative Drisko discussed the requirement that the absentee voter must complete and sign the affidavit envelope, which should come back folded by the voter in origami form. To avoid fraud, the affidavit envelope must contain the correct text (not another state's),

and must be properly completed and signed, otherwise the ballot may not be counted. Mr. Tetreault explained that he highlights on the affidavit envelope where the absentee voter must sign in order to save time, money, and aggravation, so the absentee voter will return the affidavit properly completed and signed.

Representative Drisko expressed concern that the Schumer amendment would be “dummying down” the system.

Mr. Stevens said when Congress looks at what it perceives as inferior performances by counties that run elections throughout much of the rest of the country, they see a broken system and feel the need to fix it. Representative Drisko observed that there is often little closeness between the voter and the bureaucracy in county-run election administrations, unlike in New Hampshire where the clerks often deal with the voters on a one-to-one basis.

Mr. Stevens noted legislative election committee members need to be educated on the Schumer amendment and be active. He concluded that the Schumer amendment poses a significant problem in ballot design, ballot handling, and perhaps ultimately ballot counting technology and wanted to move along to other subjects.

Mr. Stevens informed the group that Secretary Gardner and he had attended the 2009 annual Usenix conference in Montreal with some of the best informed academics on elections, including Ron Rivest (MIT), David Dill (Stanford), David Wagner (Berkeley), David Jefferson (Lawrence Livermore Labs), Andrew Appel (Princeton), Ed Felton (Princeton), Dan Wallach (Rice), Doug Jones (Iowa) and Harri Hursti. The elections section was attended by 80-100 people. He said they became reacquainted and got to know better some of academia’s leading election spokespersons on a personal basis. Under the auspices of an election research coordinating subcommittee, Usenix offers a peer review opportunity for elections research throughout the United States funded by the National Science Foundation (which is substantially federally funded). The USENIX group is a hemisphere-wide peer review environment that focuses on different information technology university research that has been conducted in the past year; it is held annually in various locations in the hemisphere, normally in North America.

Mr. Stevens indicated it was time to re-approve the July 13th, 2009 meeting minutes with the footnote added on the bottom of page 1. Mr. Manning stated there was a quorum and asked the motion to be moved. Mr. Fries moved and Representative Drisko seconded, accepting the meeting minutes. All were in favor and the motion passed.

Mr. Manning asked to have the guest name spelling changed on the June 22nd, 2009 meeting minutes from Melissa Bernard to Melissa Bernardin. All agreed.

III. Meeting Business

Mr. Stevens presented a 200+ page draft of the Request for Information (RFI) on the screen. He explained that the RFI has been developed from HB 285 (the committee’s legislative mandate), the committee’s work to establish a mission statement, goals and indicative list of capabilities, the EAC’s Voluntary Voting System Guidelines (draft) Version 1.1, other states’ RFIs and RFPs, and committee discussions. He explained that one benefit of using the framework, if not the content, of the VVSG 1.1 is that its outline is sufficiently comprehensive to accommodate the desire of the committee to describe its system in adequate detail and to reference engineering

standards. The VVSG 1.1 has been reviewed by election officials and the National Institute of Standards and Technology, adheres to standard definitions and references engineering standards – all of which election officials, academics and industry representatives are beginning to acknowledge as a common language. The requirements and test standards will eventually address the issues identified by a formal risk assessment, which is also being developed at this time.

Mr. Stevens explained that operating outside the VVSG 1.1 framework would introduce additional risk to vendors, incur unnecessary time and expense, could lead to contractual misunderstandings, and could discourage vendor participation in the RFI and RFP process. Staying within this framework might help give New Hampshire's approach some national currency at a later date.

Mr. Stevens stated the office does not have the printer capability to print 1500 pages or more of draft documents for the committee. However, he could attach the 1 megabyte file to emails for those who want to see it. It is nearly ready for committee review. However, members should note the items on the committee's checklist established in the June 22, 2009 meeting and try to ensure they are all covered.

The meeting minute taker, Colleen McCormack-Lane, left the room for the presentation at 10:45 AM.

Mr. Stevens proceeded to review the RFI's glossary and engineering standards on the screen. A discussion of the RFI details followed, relying on the existing RFI draft, with no interim or final document agreed upon.

Colleen McCormack-Lane returned to the meeting at 1:20 PM.

There was a motion on the table: That a report drafting subcommittee be established to draft the EBCDAC report for November 1, 2009 subject to the approval of the committee as a whole. The Report Subcommittee would include:

Mr. Manning, Assistant Secretary of State, Temporary Chair
Representative Harvey
Representative Perry
Mr. Fries

Motion was moved by Representative Drisko and seconded by Mr. Tetreault. The motion was adopted, so said by Mr. Manning.

The RFI Draft Subcommittee will include:

Anthony Stevens, Assistant Secretary of State
Representative Perry
Mr. Tetreault

It was agreed that the next meeting of the EBCDAC will be at 9:30 AM on October 30, 2009 at the Archives & Records Building Conference Room.

At 1:45 PM, Mr. Manning excused himself from the meeting.

At 1:50 PM Representative Drisko and Mr. Tetreault excused themselves from the meeting.

Representative Harvey asked to have another meeting prior to October 30th, 2009. The date of October 12th, 2009, at 9:30 AM was chosen for the whole committee to meet at the Archives & Records Building Conference Room.

Mr. Fries stated he would be away for the last two weeks in October and asked if he could call in to the meeting and be counted a part of a quorum. Mr. Stevens inquired if the committee needed to adopt rules to enable Mr. Fries to call in to a meeting and wondered whether his absence might affect the ability to gather a quorum for the final report. Representative Harvey wanted to know whether members could cast votes from offsite using email.

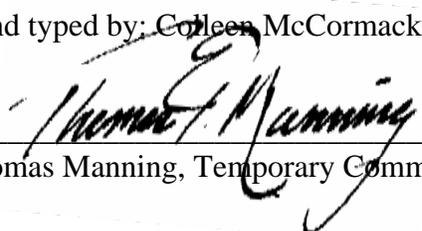
Representative Perry noted that Professor Andrew Appel was coming to the October 30th meeting and someone needed to call the other members and advise them the importance of attending. Mr. Stevens stated the committee needs to vote on the final report at that time or before.

Representative Harvey noted that EBCDAC is not an official study committee; it is an advisory committee. Hence, different meeting rules may apply. She said she would ask the House's legal counsel whether electronic comments or phone calls are allowed. Mr. Stevens asked whether a proxy vote can be one of the options. Mr. Fries stated his would not be a proxy vote, since he would be phoning in or voting via email. He asked Representative Harvey to find out the background on the rules regarding offsite voting.

It was agreed the Report Subcommittee would meet on Monday October 12 at 9:30 AM and October 13th, 2009, at 1:00 PM at the Archives and Records Building Conference Room.

The meeting was adjourned by Mr. Stevens at 2:07 PM.

Minutes taken and typed by: ~~Coleen McCormack-Lane~~

Received by: 
Thomas Manning, Temporary Committee Chair