



MEMORANDUM

Date: March 11, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Election Integrity Commission Recommendation that the Board of Supervisors Ask the Arizona Secretary of State to Eliminate or Waive Requirement for Election Assistance Commission Certification Number for Election Equipment**

Attached is a memorandum from Tom Ryan, Chair of the Pima County Election Integrity Commission (EIC), requesting that the Board of Supervisors formally ask the Arizona Secretary of State to eliminate or waive a requirement that election equipment certified for use in Arizona have a certification number from the federal Election Assistance Commission (EAC). The EIC notes that State statute requires only that election equipment comply with the Help America Vote Act of 2002 (HAVA) and that such equipment be tested and approved by a laboratory accredited pursuant to HAVA. The requirement for an EAC certification number is contained in the Secretary of State's Arizona Elections Procedures Manual.

Mr. Ryan's memorandum notes several reasons for the Pima County EIC request, including that the federal EAC has become increasingly dysfunctional due to a continuing lack of a quorum. It notes that a recent report from a Presidential Commission on Election Administration indicates the current federal standard-setting and certification process is unworkable and must be fixed. The memorandum expresses concern that the EAC standards are outdated, with the lack of a quorum preventing adoption of new standards and that there are a limited number of EAC-certified systems available for purchase at a time when Pima County is considering purchasing new elections tabulation equipment.

While all of the foregoing points are accurate, the Board of Supervisors should be aware of additional background information as it considers the EIC recommendation. Although it is true that the EAC has been hampered by the lack of a quorum, and as a result has not been able to adopt updated technical standards, the EAC has continued to certify election equipment and currently has additional systems under review. Further, the report of the Presidential Commission said the current standard-setting and certification process must be "reformed" and recommended that a designee either within or apart from the EAC be responsible for approving standards. The Presidential Commission noted that if states change their regulations so that federal approval is no longer necessary, that "will still require states, with the appropriate independent technical advice, to join together (as they

The Honorable Chair and Members, Pima County Board of Supervisors
Re: Election Integrity Commission Recommendation that Board of Supervisors Ask the Secretary of State to Eliminate or Waive Requirement for Election Assistance Commission Certification Number for Election Equipment

March 11, 2014

Page 2

did before HAVA with the National Association of State Election Directors) to endorse standards that give vendors and innovators sufficient guidance.”

Finally, while there is currently only one election equipment system with modern digital scanning capabilities certified for use in Arizona, which limits Pima County’s procurement choices, the Secretary of State’s Office has informed us it is processing certification requests from two more EAC-certified vendors. Hence, it is likely three EAC-certified systems will be state-certified in the near future. A recent Request for Proposals in Yavapai County generated responses from all four major election equipment vendors.

In conclusion, the EAC continues to certify equipment, and it appears likely there will be three digital scan election tabulation systems certified by the EAC and Arizona at the time of Pima County’s procurement decision. No alternative national standards have yet been developed on which the state could rely in lieu of EAC certification. Given all this, as well as the fact that we are still involved in litigation over past elections, I recommend that Pima County stay on the safe path and continue to follow current election law as set forth in Arizona statutes and the Arizona Elections Procedures Manual.

CHH/anc

Attachment

c: Ellen Wheeler, Assistant County Administrator for Justice and Law Enforcement
Brad Nelson, Director, Elections Department

Date: March 7, 2014
To: Pima County Board of Supervisors
From: Election Integrity Commission
Subject: Recommendation to Waive EAC Certification Requirement in AZ Elections Procedures Manual

The Pima County Election Integrity Commission requests the Pima County Board of Supervisors to formally ask the Arizona Secretary of State to eliminate or waive a requirement stated in the Arizona Elections Procedures Manual that goes beyond state statutes and is a potential hindrance to the procurement of innovative election equipment.

A.R.S. §16-442 states that "election equipment may only be certified for use in this state and may only be used in this state if it complies with the Help America Vote Act of 2002 and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the Help America Vote Act of 2002."

The Secretary of State's Elections Procedures Manual, however, includes an additional requirement for an "EAC certification number." At one time, obtaining an EAC certification number was standard practice, but in the last few years, the Election Assistance Commission has become increasingly dysfunctional. As noted in the recently released report from Presidential Commission on Election Administration, "the current standard-setting and certification process is unworkable and must be fixed. ... Either some other body within or apart from the EAC must be in charge of approving standards or the states should adapt their regulations such that federal approval is unnecessary."

Pima County needs new election equipment, but the set of EAC approved systems is extremely limited. Not only are there few vendors, but the equipment they offer has also been certified under outdated standards that discourage innovation. It is possible for a vendor to obtain certification by an accredited lab without getting an EAC certification number, and this is likely to become more and more common as the official EAC certification process becomes less and less relevant.

We would like to see the requirement for an EAC certification number removed from the Manual, or formally waived by the Secretary of State. This action could make it possible for additional vendors to respond to an RFP who otherwise would be prohibited.

We are attaching a draft letter to the Secretary of State from the Board that makes this request.

Respectfully,

Tom Ryan
Chair, Pima County Election Integrity Commission

Date:

To: Secretary of State Ken Bennett

From: Pima County Board of Supervisors

Subject: Request to Waive EAC Requirement in Arizona Elections Procedures Manual

The 2013 version of the Arizona Elections Procedures Manual states that an "EAC certification number" is required of all election equipment used in Arizona. This requirement is not found in state statutes. The Pima County Board of Supervisors hereby requests that this requirement be eliminated or waived.

A.R.S. §16-442 states "... election equipment may only be certified for use in this state and may only be used in this state if it complies with the Help America Vote Act of 2002 (HAVA) and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the Help America Vote Act of 2002." There is no explicit or implied requirement for an EAC certification number. In fact, HAVA Section 231(a)(2) explicitly provides the option for states to provide for certification via accredited laboratories.

In Chapter 10, page 97 of the Manual, we find the phrase, "Upon issuance of a certification number by the Election Assistance Commission," And in Chapter 17, page 258, we find the requirement, "A complete application includes the following documentation: ... - EAC (NASED) Certification Numbers."

It is possible for a vendor to obtain certification by an accredited lab without getting an EAC certification number, and this is likely to become more and more common as the official EAC certification process becomes less and less relevant. As noted in the recently released report from Presidential Commission on Election Administration, "the current standard-setting and certification process is unworkable and must be fixed. ... Either some other body within or apart from the EAC must be in charge of approving standards or the states should adapt their regulations such that federal approval is unnecessary."

Pima County is in the process of writing an RFP for a new central count tabulation system and there is currently only one vendor with both an EAC certification number and Arizona certification. It appears that vendors are hesitant to pursue an EAC certification number due to the lack of a commission quorum and a lack of direction at the EAC. Because of this situation, we would like to relax the certification requirements stated in the Manual without amending Arizona law.

We therefore respectfully request that the requirement for an EAC certification number be removed from the Manual or formally waived by your office. This may make it possible for additional vendors to respond to Pima County's RFP.

Respectfully,