

Election Reform Commission

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This report is also available on line at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2009/comsched/09Electionsched.html



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Election Reform Commission

February 27, 2009

To the Members of the House and Senate State, Veterans, and Military Affairs committees:

Submitted herewith is the final report of the Election Reform Commission. This commission was created pursuant to Senate Bill 08-243 and is required to present its final report to the State, Veterans, and Military Affairs committees of the House and Senate no later than March 1, 2009. The Election Reform Commission is charged with reviewing, researching, and making recommendations to ensure that every eligible citizen has the opportunity to register to vote, participate in fair, accessible, and impartial elections, and have the assurance that his or her vote will count.

Respectfully Submitted,

Ken Gordon
Chair

Executive Summary

Commission Overview and Charge

The 11-member Election Reform Commission was created by Senate Bill 08-243 with a mission to "review, research, and make recommendations to ensure that every eligible citizen has the opportunity to register to vote, participate in fair, accessible, and impartial elections, and have the assurance that his or her vote will count." In fulfilling its mission, state law requires the commission to:

- conduct a nonpartisan review of the manner in which state and local elections are currently conducted;
- review research, data, and reports available on elections that may assist the commission in recommending changes to the state's election laws; and
- recommend changes to the state's election laws to protect the fundamental right to vote guaranteed by the state constitution by ensuring that every election conducted in the state is accurate, secure, transparent, verifiable, recountable, auditable, and accessible.

Senate Bill 08-243 contains a list of subjects that the commission may consider in conducting its review in the areas of voting technology, integrity, and alternatives and management.

Commission Activities

The Election Reform Commission met during the months of November 2008 through February, 2009, taking public testimony, hearing presentations from experts and stakeholder representatives in the fields of elections and voting technology, and deliberating on issues related to Colorado's elections system. The commission created three subcommittees, comprised of three commissioners each to address issues pertaining to:

- registration and database;
- technology and auditing; and
- uniformity and simplification.

Each of the subcommittees referred to the full commission a set of recommended changes to state election laws and practices in its assigned subject area. The commission then considered each subcommittee recommendation, taking action on which changes to state election law or practice it would recommend in the final report.

Commission Recommendations

The commission approved 20 recommendations, including 6 recommendations pertaining to registration and database, 2 recommendations pertaining to technology and auditing, and 12 recommendations pertaining to uniformity and simplification. The commission elected not to approve five recommendations.



Commission Overview and Charge

The 11-member Election Reform Commission was created by Senate Bill 08-243 (Appendix A). The bill establishes which authorities appoint the commission's membership and the criteria to be considered in appointing members. The mission of the commission is to "review, research, and make recommendations to ensure that every eligible citizen has the opportunity to register to vote, participate in fair, accessible, and impartial elections, and have the assurance that his or her vote will count." In fulfilling its mission, state law requires the commission to:

- conduct a nonpartisan review of the manner in which state and local elections are currently conducted;
- review research, data, and reports available on elections that may assist the commission in recommending changes to the state's election laws; and
- recommend changes to the state's election laws to protect the fundamental right to vote guaranteed by the state constitution by ensuring that every election conducted in the state is accurate, secure, transparent, verifiable, recountable, auditable, and accessible.

State law contains the following list of subjects that the commission may address in conducting its required review:

Voting technology.

- issues and problems involving electronic voting systems that have arisen in Colorado and other states since the enactment of the federal Help America Vote Act of 2002 (HAVA);
- the standards, criteria, and procedures by which rules and guidelines for the certification of electronic voting systems are adopted in the state;
- the manner in which electronic voting systems are certified in Colorado;
- public access to the certification process and to electronic voting system software;
- technology that enables persons with disabilities to vote independently and in compliance with HAVA; and
- the short- and long-term costs of purchasing, maintaining, and operating electronic voting systems.

Integrity.

- the reliability and integrity of electronic and other voting systems;
- the security, accuracy, and efficiency of the systems and methods used to register electors and to maintain voter registration records;
- whether the auditing and recounting procedures in current law provide a meaningful level of statistical confidence to electors and candidates;
- the number of eligible electors who show a form of identification that does not contain a photograph of the eligible elector when voting at a polling place, and the number of eligible electors who show each form of such identification, based on information received from county clerk and recorders; and
- other issues related to the accuracy, security, transparency, verifiability, recountability, audibility, and accessibility of elections in the state.



Alternatives and management.

- issues related to the conduct of elections in special districts;
- whether the state should adopt a uniform voting system to be used in all counties;
- alternative methods of conducting elections; and
- the feasibility and desirability of creating a permanent election reform commission.

Senate Bill 08-243 requires presentation of this final report to the State, Veterans, and Military Affairs committees of the Senate and House of Representatives.

Commission Activities

The commission met six times during the months of November 2008 through February 2009. The commission took public testimony at four of these meetings, and specifically fielded testimony from county clerk and recorders in conjunction with the Colorado County Clerks Association annual conference in January, 2009. The commission also heard presentations from several experts and representatives of stakeholder organizations in the fields of elections and election technology. A compilation of the commission's meeting activities can be found in the Resources and Appendices section of this report.

At the commission's November 12, 2008, meeting, the commission created three subcommittees, comprised of three commissioners each to address issues pertaining to:

- registration and database;
- technology and auditing; and
- uniformity and simplification.

The subcommittees were charged with establishing a set of recommended changes to state election laws and practices in their assigned subject areas for referral to the full commission. The commission took action on the referred recommendations at its February 17, 2009, meeting. To take final action on the subcommittee recommendations, the commission created a ballot consisting of action items representing all of the recommendations made by the three subcommittees. The commission approved 20 of the recommendations, and elected not to approve 5 of the recommendations. Several of the recommendations approved by the commission do not recommend direct legislative action by the General Assembly, but rather recommend that the General Assembly consider certain issues.



Commission Recommendations

As a result of the Election Reform Commission's activities, the commission makes the following recommendations to the Colorado General Assembly, organized by subcommittee subject area. The full subcommittee recommendations, as submitted to the full commission, are contained in Appendix B (Registration and Database), Appendix C (Technology and Auditing), and Appendix D (Uniformity and Simplification).

Registration and Database

Recommendation #1 – SCORE System

The Statewide Colorado Registration and Elections (SCORE) system was implemented in 2008 to comply with the federal Help America Vote Act of 2002 (HAVA). SCORE is a database containing statewide voter registration information, which is used for identity verification.

The commission encourages and supports the efforts of the Secretary of State and the county clerk and recorders to continue making improvements to the system in the following areas:

- improvement of reporting capabilities;
- refinement and development of additional modules; and
- resolution of technical issues.

Recommendation #2 – Photo Identification

The commission recommends legislation to require voters to present photo identification when registering to vote.

Recommendation #3 – Voter Registration Form

Prior to the 2008 general election, confusion existed regarding the need for new voters to check a box on voter registration forms affirming that they did not have a Colorado driver's license or Department of Revenue identification number if they were submitting the last four digits of their social security numbers in lieu of these forms of identification.

The commission recommends that the Secretary of State and the Colorado County Clerks Association work to redesign the Colorado voter registration form to:

- clarify issues surrounding the affirmative need to mark the "check box" if a voter does not have a driver's license or state identification number. The commission also recommends that voter instructions be rewritten to clarify that a driver's license or state identification number is required if one has been issued, and a social security number should only be used if the voter has not been issued the required documents; and
- use a separate form to make administrative changes to information for currently registered voters, including changing a name, address, or party affiliation.



Recommendation #4 – Assisted Living Facilities

The commission recommends that the General Assembly consider legislation to exempt persons living in assisted living or nursing care facilities from identification requirements for voting. In addition, the commission recommends the use of the Secretary of State's rules to ensure consistent application of regulations pertaining to identifying residents of assisted living or nursing care facilities for elections-related purposes.

Recommendation #5 – Verification Period for UOCAVA and ID-deficient Voters

The commission recommends legislation to expand the current eight-day post-election signature verification period to allow for continued receipt of ballots from overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), while maintaining the requirement that the ballots be postmarked no later than 7 p.m. on election day, where postmarks are applicable. The commission also recommends providing identification to voters who are identification-deficient.

Recommendation #6 – National Voter Registration Database

A national voter registration database would eliminate the possibility of citizens registering to vote in more than one jurisdiction.

The commission recommends that Colorado participate in the implementation of a national voter registration database.

Technology and Auditing

Recommendation #7 – Voting system certification

After the Secretary of State's December 2007 decertification of the electronic voting systems (EVS) used by the majority of Colorado counties, Governor Ritter signed into law House Bill 08-1155, which provided for retesting and interim re-certification of any decertified voting machines. Under current law, the provisions of the bill are repealed on July 1, 2009, resulting in the decertification of systems certified under the bill. Extending the interim emergency certifications allowed for in HB 08-1155 will provide financial relief to cash-strapped counties and ample time to phase in the next generation of technology.

The commission recommends legislation to amend the statutes on voting system certification as follows:

- ***House Bill 08-1155.*** Extend the interim emergency certifications provided for in House Bill 08-1155 through the 2013 election cycle. Under this recommendation, use of currently certified EVS would be allowed through the 2013 election cycle, subject to all conditions that attached to the 2007 and 2008 certifications of such EVS.
- ***Voter-verified paper audit trails (VVPATs).*** Repeal the requirement that all direct recording electronic (DRE) voting equipment have voter-verified audit trails (VVPATs) by 2010. Jefferson and Arapahoe counties will not have to perform expensive short-term retrofits on DREs not currently equipped with VVPATs.



- ***Paper ballot/optical scan-based EVS.*** For all elections after the 2013 election cycle, and for all new electronic voting systems purchased and utilized before the 2013 election cycle, require all counties to utilize a paper ballot/optical scan-based electronic voting system that has been certified under the revised procedures recommended below.
- ***Certification of paper ballot/optical scan-based system and modification of EVS whose certifications have been extended.*** (applies to all new EVS and modifications to certified EVS)
 - ▶ repeal requirement that all EVS must be tested and certified as meeting current federal standards;
 - ▶ allow EVS whose certifications are extended through the 2013 election cycle to be modified subject to testing and certification by the Secretary of State that the systems, as modified, meet all Colorado testing and certification requirements;
 - ▶ change the testing and certification completion requirement in Section 1-5-617 (1)(c), C.R.S., from 90 days to 180 days; and
 - ▶ allow the Secretary of State to utilize and rely upon testing done by another state's secretary of state or chief election official, or by a federally certified testing lab, provided that the Colorado Secretary of State has complete access to all test documentation, test data, and test reports, and provided that the Colorado Secretary of State makes written findings and certifies that (1) he or she has reviewed the test documentation, data, and reports and finds that the testing has been conducted in accordance with state-of-the-art engineering standards and practices; and (2) the testing met each applicable Colorado requirement.

Recommendation #8 – Post-election audits

The commission recommends legislation to revise the statutory requirements for post-election audits in Section 1-7-514, C.R.S., to require a risk-based audit methodology instead of the current fixed-percent audit. All aspects of each election, whether mail-in voting, early voting, election day voting, or other, should be subject to the same audit requirements. In addition, the commission recommends the following:

- require all voting systems to report votes in auditable batches;
- define the confidence level required, e.g. 90 percent or some lesser confidence level;
- require audit units to be randomly selected;
- require the audit process to be transparent;
- require audit processes to be developed for each voting system in Colorado and accomplished in a way that is easily understood by public officials charged with completing the work;
- set out in statute the general requirements, standards, and procedures for a risk-based audit; and



- require the Secretary of State to implement risk-based election audits by notice and comment rule-making, resulting in a new election rule giving guidance to the counties as to the specific requirements, standards, and procedures to be followed.

Uniformity and Simplification

The Election Reform Commission feels that certain areas within the elections environment are primed for uniform and consistent practices. While the commission recognizes the need for designated election officials to have flexibility in deciding how best to deliver elections in their respective counties, a need exists to have consistent practices where there is an opportunity to curtail voter confusion.

Recommendation #9 – Mail Ballot Elections

The commission recommends legislation to allow counties the option to conduct primary elections by mail, if the legislation contains the following requirements:

- ***Minimum threshold.*** Before an all-mail ballot election is allowed, the absentee voter participation in the county must exceed 50 percent of all active voters in the previous presidential or gubernatorial election.
- ***Service centers.*** Counties conducting elections by mail must include a sufficient number of service centers established by formula. The service centers must provide consistent services to the voting public, and each service center must have secured computer access, be Americans with Disabilities Act-compliant, include a sufficient number of DREs, include a sufficient number of voting booths, have the ability to distribute second original ballots, have the ability to distribute replacement ballots, serve as a ballot drop-off location, and provide the ability to register in an emergency manner. In addition, the legislation must:
 - ▶ require minimum hours of operation and number of days open prior to election day;
 - ▶ require service centers to be available during early voting; and
 - ▶ require designated election officials to determine the number, location, and manner of operation of service centers, including poll watching activities at service centers, in consultation with the chairpersons of the county central committees of the major political parties and representatives of the minor political parties, and after a public comment period of no less than 15 days and a public hearing held in accordance with the rules adopted by the Secretary of State.
- ***Election preparation.*** Designated election officials must meet with an election vendor to determine whether the vendor has the ability to provide sufficient mail ballots in a timely manner, and meet with the U.S. Postal Service to coordinate ballot mailing, receiving, and tracking.
- ***Voter eligibility.*** The legislation must include language specifically mandating who is to receive mail ballots. The language must include direction to the designated election official that he or she mail to all registered voters, mail to all active voters, or that the



county maintains discretion as to whether to provide a mail ballot to active *or* inactive eligible voters or active *and* inactive eligible voters. The legislation should also retool the manner by which Colorado currently approaches its "active/inactive" voter registration designations. New legislation should take into account the existence of SCORE, its functionality, and its ability to aid in list maintenance and national change of address tracking.

- ***Unaffiliated voters.*** The legislation must establish deadlines for affiliating with a party when conducting a mail ballot election.
- ***Issuing/counting ballots.*** The legislation should allow designated election officials to send ballots as early as 30 days prior to the election, and bulk mailing no later than 21 days prior. The legislation should address how a voter requests a replacement ballot (i.e., by telephone, internet, or facsimile), and allow designated election officials to begin counting ballots as soon as received or at least 22 days before the election.
- ***Return of ballots.*** The legislation should require uniformity related to methods of returning ballots. At a minimum, each polling location/service center must have a secure receptacle for voters to cast or drop off their mail ballots, and the security of the receptacle must be consistent with the security of paper or provisional ballots under current law or Secretary of State rule. Also, the legislation should consider stand-alone return boxes and the possibility of creating a certification program for ballot collection drives.
- ***Postage.*** The legislation should require (or allow) counties to pay postage, with the state reimbursing counties if it is a requirement.
- ***Homeless voters.*** The legislation should address services for homeless voters, including allowing such voters to list the county clerk's office as the mailing residence for obtaining a mail ballot.

Recommendation #10 – Healthcare Facilities

Colorado's counties define the term "health care facilities" differently across the state, resulting in a variance in the treatment of eligible voters in these venues. The commission recommends that the term "health care facilities" be specifically defined in statute.

Recommendation #11 – Forms

Forms used prior to and during the 2008 election cycle were very confusing to voters and in some instances caused voter disenfranchisement. Several forms, including voter registration forms, applications for mail ballots, combination forms, provisional ballot forms, and provisional ballot envelopes, varied across the state.

The commission recommends legislation to address election forms, including voter registration, mail ballot application, combination, and provision ballot forms, with the following provisions:

- The Secretary of State must dedicate resources to obtaining professional guidance for the development of forms that minimize voter confusion and maximize ease of use.



The legislation must also require the Secretary of State to obtain professional guidance in developing the forms.

- The legislation must require rule making regarding what constitutes approved and acceptable forms certified for use and acceptance by eligible voters, campaigns, voter registration drives, and designated election officials.
- The legislation must establish uniformity with regard to how forms are used inside polling locations, particularly the management of provisional ballot forms and envelopes by election judges and personnel.

Recommendation #12 – Primary Elections

Currently, county clerk and recorders must hold primary elections, even if there is no contested race in the primary. The commission considered the following three methods for allowing a county clerk and recorder to designate the winner of an uncontested primary election without conducting an election:

- cancelling the primary election;
- holding the primary election in the legal sense, but allowing the clerk and recorder to dispense with collecting or tabulating votes; or
- holding the primary election, but limiting all votes to a single polling location, thus creating a single polling center.

The commission selected the second option for recommendation to the General Assembly. This approach avoids major statutory changes and the unintended consequences of actually cancelling a primary, while eliminating any incentive for a candidate or party to manipulate a primary for campaign finance purposes.

Therefore, the commission recommends that a clerk and recorder be allowed to designate the winner of an uncontested primary election by holding a primary in a legal sense, but allowing the clerk and recorder to dispense with collecting or tabulating votes.

Issue #13 – Canvassing Board Procedures

Canvass board procedures for partisan elections are poorly defined. The commission recommends legislation to address the need for uniformity and simplicity with regard to canvass board procedures. The legislation should include the following provisions:

- ***Composition of canvass board.*** The legislation must explicitly require clerk and recorders to tell county chairs the number of canvass board members necessary to complete work, and require the county chairs to each appoint the same number of members. Currently, the major party chairpersons are required to appoint one or more members and certify their appointment "in the manner prescribed by the clerk and recorder." Current law allows each party chairperson to appoint as many as six canvass board members as he or she sees fit. In practice the number of appointees and procedures vary considerably, and in some instances there are too few canvass board members to meaningfully complete the work in the allotted time.



- **Decision-making procedures.** The legislation should specify proper procedure for reaching decisions and provide for uniform application of how members are counted. The law is silent on how the canvass board reaches decisions. Currently, the board consists of members appointed by the chair, plus the clerk and recorder. Thus, if the canvass board operates by majority vote, the clerk and recorder can easily and consistently be outvoted. In some instances, canvass boards treat all Republicans as one vote, all Democrats as one vote, and the clerk and recorder as one vote. In other instances, certification may require unanimity.
- **Duties of canvass board.** In addition to the current canvass board duties of reconciling the ballots to confirm that the number counted does not exceed the number cast and certifying the abstract of votes, the legislation should stipulate one of the following:
 - require the boards to ensure the number of ballots cast in each precinct does not exceed the number of eligible voters in any precinct; or
 - allow canvass boards to inspect and investigate where the number of votes cast fails to align with the number of eligible voters.
- **Remedies for improper certification.** The legislation should allow minor party and unaffiliated candidates to bring objections to the canvass board process to the Secretary of State, who will then investigate and resolve any procedural problems. Under current law, minor party and unaffiliated candidates may appoint observers to the canvass board process, but the law is silent if they have an objection. Assumably, a minor party candidate may bring a district court complaint under Section 1-1-113, C.R.S., or a person may wait until certification and contest the election results. Allowing an intermediate, regulatory remedy rather than requiring a full-blown district court hearing or election contest is appropriate.
- **Remedies for failure to certify.** The legislation should explicitly require the canvass board to either certify election returns or transmit to the Secretary of State noncertified results with an explanation for the noncertification. The law is silent if a canvass board refuses to certify the returns. Under Section 1-10-104, C.R.S., the law directs that if the results do not conform to law, the canvassing board will still canvass the returns if they are explicit enough in showing the number of votes cast. But this section nonetheless leaves unanswered whether a canvass board must certify defective returns, or what the Secretary of State's remedies are if the canvass board refuses to certify.

Recommendation #14 – Online voter registration

The commission recommends that the General Assembly take into consideration the issue of allowing on-line voter registration.

Recommendation #15 – Future SCORE funding

The commission recommends that the General Assembly consider providing a source of funding to maintain the SCORE system after the existing funding source is exhausted. The General Assembly should also consider whether counties should uniformly be required to contribute funding to support SCORE.



Recommendation #16 – Overhaul Active/Inactive Statute

The commission recommends that the General Assembly consider a major re-haul of Colorado's active/inactive statute.

Recommendation #17 – Overhaul Title 1, C.R.S., in its Entirety

The commission recommends that the General Assembly consider the issue of requiring the Secretary of State to form an ongoing working group to engage in serious work to re-haul Title 1, C.R.S., and that the Secretary of State, along with the legislature, continue to advocate for significant revisions guided toward bringing uniformity and simplicity to the elections environment in the state.

Recommendation #18 – Tribal Identification

The commission recommends that the General Assembly consider the issue of expanding the acceptable form of identification required for voter registration to include tribal identification cards issued by a federally recognized Indian tribe that certifies that the eligible elector is a member of the tribe and is at least 18 years of age at the time of the election.

Recommendation #19 – Uniform Notice and Correction of Deficiencies

The commission recommends that the General Assembly consider the issue of creating uniformity across all counties with regard to the following:

- which deficiencies in voter registration information can be cured and which deficiencies are fatal to registration;
- the manner in which voters are informed that identification is required to be included in mail ballots; and
- what types of locations are suitable for dropping off mail ballots on election day.

Recommendation #20 – Extension of commission

One of the subjects suggested for review by the Election Reform Commission in Senate Bill 08-243 is "the feasibility and desirability of creating a permanent Election Reform Commission." The commission is currently set to expire on July 1, 2009.

The commission recommends the creation of a permanent Election Reform Commission.

Recommendations Not Approved by the Commission

Five additional recommendations were presented to the Election Reform Commission for consideration at its February 17, 2009, meeting. However, the commission elected not to approve these recommendations.



Social Security Numbers

Expanding the SCORE system to allow for verification of social security numbers. Specifically, using the system to affirm voter identification information through coordination of SCORE and the Social Security Administration database, similar to what is currently done with the Department of Revenue's driver's license database.

Emergency Registration

Striking a provision in Section 1-2-217.5, C.R.S., that allows a voter to register by emergency registration when the registration books are closed. A voter must declare under oath that the voter applied to register to vote prior to the close of registration in a voter registration drive, and is able to provide the location of the drive and approximate date of registration.

Proof of Citizenship

Requiring voters to provide proof of citizenship when registering to vote.

Voter Registration Drives

Amending the statutes governing voter registration drives (Section 1-2-701, et. seq., C.R.S.) to:

- require every circulator who participates in a voter registration drive to go through training; and
- increase the penalties for voter registration drive organizers in order to hold those that conduct drives improperly to a higher level of accountability.

Training

Requiring the Secretary of State to produce an elections manual addressing election officials' application of election laws and rules, and making the manual free and publicly available online. The recommendation contained provisions concerning the following:

- base line Secretary of State training;
- distribution of the manual to election officials;
- distribution of portions of the manual to polling locations; and
- video training.



Technical Feasibility

The commission is required to address in its report the technical feasibility of its recommended changes. Throughout its deliberations, the commission has been mindful of potential limitations related to technical feasibility.

The recommendations of the Election Reform Commission were developed through numerous meetings of the commission and its three subcommittees. Those meetings included substantial amounts of public testimony from election experts and administrators concerning the various proposals, and such testimony frequently included specific input concerning the technical feasibility of the various proposals. In particular, there was frequent input from county clerks and representatives of the Secretary of State's Office. For example, the Secretary of State's program manager for voting equipment certification participated in meetings of the Technology and Auditing Subcommittee during its consideration of proposals concerning voting equipment and post-election audits, and the subcommittee's chair expressly sought input concerning the technical feasibility of the subcommittee's recommendations.

In its final meeting on February 17, 2009, to consider specific recommendations, the commission's discussions frequently touched upon the feasibility of particular proposals. Such considerations included cost, the availability of necessary resources, and the potential impact on the SCORE system.

Based on public testimony and additional input from the Secretary of State's Office, some particular comments concerning feasibility of the specific recommendations of the commission include the following:

- SCORE improvements; the recommended improvements are consistent with the existing plans of the Secretary of State's Office and should not pose any new technical issues.
- Photo identification; there would be little impact to the SCORE system, but legislation would likely need to address a means of providing no-cost photo identification for low-income citizens who currently lack photo identification.
- Voter registration form; improvements are planned by the Secretary of State's Office, and no technical difficulties are anticipated.
- Assisted living facilities; no issues of technical feasibility are anticipated.
- Verification period for UOCAVA and identification-deficient voters; some impact to the SCORE system is anticipated, but there are no major technical issues to overcome.
- National voter registration database; participation in a national voter registration database is not feasible in the near future, since the various state databases are not interoperable; however, it is expected that in coming years states will move in this direction, and a national voter registration database may become possible.
- Voting system certification; the recommendation eases existing requirements concerning voting systems certification and requirements for voter-verified paper audit trails, and therefore these recommendations represent improvements in technical feasibility over current law. Requiring counties to implement paper-based voting systems by 2014 may present a significant fiscal challenge for those counties that would then be forced to replace their existing voting equipment as a result. The major technical challenge may be assuring that certified equipment is available for purchase at the time.



- Post-election audits; significant details must be addressed to implement the recommendation, but the recommendation itself is technically feasible.
- Mail ballot elections; there may be significant impacts to counties, depending on the details of implementing the recommendations, but there are no apparent technical barriers.
- Health care facilities; providing a statutory definition presents no technical issues.
- Forms; improving forms is consistent with current efforts of the Secretary of State and county clerk and recorders, and there are no technical barriers for implementing the commission's recommendations.
- Primary elections; although there are procedural details that must be worked out, there do not appear to be any technical barriers to implementation of the commission's recommendation.
- Canvass board procedures; there are no technical issues presented by the commission's recommendations.

More detailed analysis of the technical feasibility of the commission's recommendations may be possible when more detail is developed, such as through implementing legislation.



Fiscal Impact Statement

Because commission recommendations have not yet been considered or requested in bill draft form, fiscal analyses of the recommendations are not available at this time. Any commission recommendations that members of the General Assembly introduce in a bill will receive a fiscal analysis by the Legislative Council Staff.



Resources and Appendices

Meeting summaries were prepared for each meeting of the commission and contain all handouts provided to the commission. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The meeting summaries include a listing of those members of the public who testified, and brief descriptions of the testimony. The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

http://www.state.co.us/gov_dir/leg_dir/csstaff/2009/comsched/09Electionsched.html

Meeting Date and Agenda Items

November 12, 2008

- ◆ Welcome and introduction of commission members
- ◆ Discussion regarding commission's organization and charge
- ◆ Setting of commission meeting schedule
- ◆ Public testimony

December 2, 2008

- ◆ Presentation by Dr. Dan Wallach, Associate Professor of Computer Science, Rice University, on security and reliability of electronic voting machines
- ◆ Presentation by Mr. Paul Craft, Senior Partner and Consultant, Freeman, Craft, McGregor Group, on voting system certification and security
- ◆ Presentation by Ms. Rosemary Rodriguez, Chair, Election Assistance Commission, on pending federal elections legislation
- ◆ Updates from commission subcommittees
- ◆ Presentation by Mr. Chuck Patrick, Master Process Modeler, Slipglass Enterprise Information Security Architects
- ◆ Public testimony

December 16, 2008

- ◆ Presentation by Mr. Maurice Knaizer, Assistant Deputy Attorney General, on House Bill 08-1155 and voting systems certification
- ◆ Commission discussion regarding the repeal of the provisions of House Bill 08-1155
- ◆ Presentation by Mr. William Browning, Program Manager, Statewide Colorado Registration and Elections System (SCORE), on the SCORE system
- ◆ Presentation by Dr. Robert Stein, Professor of Political Science, Rice University, entitled Voter Evaluation and Satisfaction: a Comparison of Paper and DRE Voting Systems
- ◆ Public testimony
- ◆ Updates from commission subcommittees
- ◆ Commission calendar setting and other business



January 5, 2009

- ◆ Meeting in Pueblo in conjunction with the Colorado County Clerks Association Annual Conference
- ◆ Testimony by Colorado's county clerks

February 10, 2009

- ◆ Presentation by Mr. Ivan Meek, Democracy Technology Project, on the latest developments with shear card vote recorder
- ◆ Presentation by Colorado Lawyers Committee Election Task Force on bipartisan recommendations for improvements to Colorado's election system
- ◆ Discussion with Representative Paul Weissmann, Majority Leader, House of Representatives, regarding House Bill 09-1018, the SCORE system, and HAVA compliance
- ◆ Discussion regarding the recommendations of the subcommittees
- ◆ Commission calendar setting and other business

February 17, 2009

- ◆ Public testimony regarding subcommittee recommendations
- ◆ Commission final action on subcommittee recommendations
- ◆ Other business

Appendix A

Senate Bill 08-243



NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 08-243

BY SENATOR(S) Gordon;
also REPRESENTATIVE(S) Carroll M., Carroll T., Labuda, Looper,
Massey, McGihon, Middleton, Todd, and Frangas.

CONCERNING THE CREATION OF THE ELECTION REFORM COMMISSION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 1 of title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 4 ELECTION REFORM COMMISSION

1-1-401. Election reform commission - creation - membership - staff. (1) THERE IS HEREBY CREATED THE ELECTION REFORM COMMISSION, REFERRED TO IN THIS PART 4 AS THE "COMMISSION". THE MISSION OF THE COMMISSION IS TO REVIEW, RESEARCH, AND MAKE RECOMMENDATIONS TO ENSURE THAT EVERY ELIGIBLE CITIZEN HAS THE OPPORTUNITY TO REGISTER TO VOTE, PARTICIPATE IN FAIR, ACCESSIBLE, AND IMPARTIAL ELECTIONS, AND HAVE THE ASSURANCE THAT HIS OR HER VOTE WILL COUNT.

(2) THE COMMISSION SHALL CONSIST OF ELEVEN MEMBERS,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

APPOINTED NO LATER THAN AUGUST 15, 2008, AS FOLLOWS:

- (a) TWO MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE;
- (b) TWO MEMBERS APPOINTED BY THE MINORITY LEADER OF THE SENATE;
- (c) TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, ONE OF WHOM SHALL BE EITHER A COUNTY CLERK AND RECORDER OR A REPRESENTATIVE OF COUNTY CLERK AND RECORDERS, OR A REPRESENTATIVE OF MUNICIPAL GOVERNMENT;
- (d) TWO MEMBERS APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, ONE OF WHOM SHALL BE EITHER A COUNTY CLERK AND RECORDER OR A REPRESENTATIVE OF COUNTY CLERK AND RECORDERS, OR A REPRESENTATIVE OF MUNICIPAL GOVERNMENT, WHICHEVER WAS NOT APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (2);
- (e) ONE MEMBER APPOINTED BY THE GOVERNOR;
- (f) ONE MEMBER APPOINTED BY THE SECRETARY OF STATE; AND
- (g) ONE MEMBER, APPOINTED JOINTLY BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE, WHO SHALL SERVE AS THE CHAIRPERSON OF THE COMMISSION.

(3) THE OFFICIALS WHO APPOINT THE MEMBERS OF THE COMMISSION SHALL ATTEMPT TO ACHIEVE REGIONAL DIVERSITY AND PARTISAN BALANCE ON THE COMMISSION AND SHALL CONSIDER FOR MEMBERSHIP PERSONS WITH EXPERIENCE AND EXPERTISE IN:

- (a) ELECTION LAW, INCLUDING ELECTION RULE 45 OF THE SECRETARY OF STATE, 8 CCR 1505-1, AND THE FEDERAL "HELP AMERICA VOTE ACT OF 2002", PUB.L. 107-252, CODIFIED AT 42 U.S.C. SEC. 15301 ET SEQ., REFERRED TO IN THIS PART 4 AS "HAVA";
- (b) ELECTION ADMINISTRATION, AS AN ELECTED COUNTY CLERK AND RECORDER OR AS A STATE OR LOCAL ELECTION OFFICIAL;

(c) COMPUTER SCIENCE, INCLUDING EVALUATION AND TESTING OF COMPUTER SYSTEMS, NETWORKING, AND SECURITY;

(d) STATISTICS AND AUDITING, INCLUDING SAMPLING AND CORRELATION OF PRECINCT DATA WITH COUNTY DATA;

(e) ENGINEERING AND SYSTEMS ANALYSIS; AND

(f) ACCESSIBILITY OF VOTING SYSTEMS TO PERSONS WITH DISABILITIES.

(4) THE LEGISLATIVE COUNCIL STAFF AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES MAY ASSIST THE COMMISSION WHEN SUCH ASSISTANCE IS APPROVED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE.

(5) THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT COMPENSATION AND WITHOUT REIMBURSEMENT OF EXPENSES.

(6) THE CHAIRPERSON OF THE COMMISSION SHALL CALL THE FIRST MEETING OF THE COMMISSION, TO BE HELD NO LATER THAN NOVEMBER 14, 2008. THE CHAIRPERSON SHALL DETERMINE THE SCHEDULE OF MEETINGS OF THE COMMISSION AND PRESENT THE FINAL REPORT OF THE COMMISSION IN ACCORDANCE WITH SECTION 1-1-402 (4).

1-1-402. Duties - scope of review - meetings - report. (1) THE COMMISSION SHALL:

(a) CONDUCT A NONPARTISAN REVIEW OF THE MANNER IN WHICH STATE AND LOCAL ELECTIONS ARE CURRENTLY CONDUCTED;

(b) REVIEW ANY RESEARCH, DATA, AND REPORTS AVAILABLE ON ELECTIONS THAT MAY ASSIST THE COMMISSION IN RECOMMENDING CHANGES TO THE STATE'S ELECTION LAWS; AND

(c) RECOMMEND CHANGES TO THE STATE'S ELECTION LAWS TO PROTECT THE FUNDAMENTAL RIGHT TO VOTE GUARANTEED BY THE STATE CONSTITUTION BY ENSURING THAT EVERY ELECTION CONDUCTED IN THE STATE IS ACCURATE, SECURE, TRANSPARENT, VERIFIABLE, RECOUNTABLE, AUDITABLE, AND ACCESSIBLE.

(2) THE REVIEW CONDUCTED BY THE COMMISSION PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION MAY ADDRESS SUBJECTS INCLUDING BUT NOT LIMITED TO:

(a) ISSUES AND PROBLEMS INVOLVING ELECTRONIC VOTING SYSTEMS THAT HAVE ARISEN IN COLORADO AND OTHER STATES SINCE THE ENACTMENT OF HAVA;

(b) THE STANDARDS, CRITERIA, AND PROCEDURES BY WHICH RULES AND GUIDELINES FOR THE CERTIFICATION OF ELECTRONIC VOTING SYSTEMS ARE ADOPTED IN THE STATE;

(c) THE MANNER IN WHICH ELECTRONIC VOTING SYSTEMS ARE CERTIFIED IN THE STATE;

(d) PUBLIC ACCESS TO THE CERTIFICATION PROCESS AND TO ELECTRONIC VOTING SYSTEM SOFTWARE;

(e) TECHNOLOGY THAT ENABLES PERSONS WITH DISABILITIES TO VOTE INDEPENDENTLY AND IN COMPLIANCE WITH HAVA;

(f) THE SHORT-TERM AND LONG-TERM COSTS OF PURCHASING, MAINTAINING, AND OPERATING ELECTRONIC VOTING SYSTEMS;

(g) THE RELIABILITY AND INTEGRITY OF ELECTRONIC AND OTHER VOTING SYSTEMS;

(h) THE SECURITY, ACCURACY, AND EFFICIENCY OF THE SYSTEMS AND METHODS USED TO REGISTER ELECTORS AND TO MAINTAIN VOTER REGISTRATION RECORDS;

(i) ISSUES RELATED TO THE CONDUCT OF ELECTIONS IN SPECIAL DISTRICTS;

(j) WHETHER THE STATE SHOULD ADOPT A UNIFORM VOTING SYSTEM TO BE USED IN ALL COUNTIES;

(k) WHETHER THE AUDITING AND RECOUNTING PROCEDURES IN CURRENT LAW PROVIDE A MEANINGFUL LEVEL OF STATISTICAL CONFIDENCE TO ELECTORS AND CANDIDATES;

(l) THE NUMBER OF ELIGIBLE ELECTORS WHO SHOW A FORM OF IDENTIFICATION THAT DOES NOT CONTAIN A PHOTOGRAPH OF THE ELIGIBLE ELECTOR WHEN VOTING AT A POLLING PLACE, AND THE NUMBER OF ELIGIBLE ELECTORS WHO SHOW EACH FORM OF SUCH IDENTIFICATION, BASED ON INFORMATION RECEIVED FROM COUNTY CLERKS AND RECORDERS;

(m) OTHER ISSUES RELATED TO THE ACCURACY, SECURITY, TRANSPARENCY, VERIFIABILITY, RECOUNTABILITY, AUDITABILITY, AND ACCESSIBILITY OF ELECTIONS IN THE STATE;

(n) ALTERNATIVE METHODS OF CONDUCTING ELECTIONS; AND

(o) THE FEASIBILITY AND DESIRABILITY OF CREATING A PERMANENT ELECTION REFORM COMMISSION.

(3) THE MEETINGS OF THE COMMISSION SHALL BE OPEN TO THE PUBLIC. AT NO FEWER THAN TWO MEETINGS HELD BEFORE THE COMMISSION ISSUES THE FINAL REPORT PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE COMMISSION SHALL SOLICIT AND RECEIVE PUBLIC TESTIMONY AND INPUT ON THE ISSUES STUDIED BY THE COMMISSION AND PUBLIC COMMENTS ON THE WORK OF THE COMMISSION.

(4) THE COMMISSION SHALL PRESENT A FINAL REPORT TO THE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES NO LATER THAN MARCH 1, 2009. THE REPORT SHALL INCLUDE THE COMMISSION'S RECOMMENDED CHANGES TO THE STATE'S ELECTION LAWS AND AN UNBIASED ANALYSIS OF THE FISCAL IMPACT AND TECHNICAL FEASIBILITY OF THE RECOMMENDED CHANGES.

1-1-403. Repeal of part. THIS PART 4 IS REPEALED, EFFECTIVE JULY 1, 2009.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Peter C. Groff
PRESIDENT OF
THE SENATE

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

Appendix B

Registration and Database recommendations



Election Reform Commission
Registration / SCORE Database Sub Committee
Summary Report- January 15, 2009
Sally Misare (Chair), Patti Nickell & Robert C. Balink (members)

Items discussed and re-affirmed as Committee's Preliminary Recommendations to Commission during January 2, 2009 Conference Call among Committee Members.

SCORE Issues: These items will likely NOT require legislative action, but should be given priority review and consideration in preparing for the next election.

- 1) Expand system to allow for verification of SS#'s
- 2) Improved Reporting Capabilities
- 3) Refinement / Development of Additional Modules
- 4) Technical issues

Registration Issues:

Legislative Recommendations for Improvement

- 5) Emergency Registration – C.R.S. 1.217.5 states “The elector applied to register to vote prior to the close of registration in a voter registration drive and is able either to show the receipt from the voter registration application that the elector submitted to the voter registration drive **or to provide the location of the voter registration drive and the approximate date of registration...**”

The Committee recommends consideration of amendment to the Statute to delete **highlighted provision, as this provision is currently tantamount to Election Day Voter Registration, rendering pre-Election registration deadlines meaningless.**

- 6) Consider legislation that requires voters to provide proof of citizenship when registering, since U.S. citizenship is an eligibility requirement per CRS 1-2-101. This will also ensure County Clerks comply with CRS 1-2-202 which states that they only register eligible electors. The current self-affirmation of citizenship on Voter Registration forms has enabled non-citizens to register to vote.
- 7) Consider legislation that requires voters to present a Photo ID when Registering to Vote. In 2008, the United State Supreme Court upheld the Indiana Photo ID law and stated it is NOT an unreasonable barrier to voting.

Administrative Recommendations for Improvement

- 8) Colorado Clerk's Association work with SOS to redesign Registration Form to clarify issues surrounding affirmative need to mark "check box" if voter does not have a Driver's License or State ID Number. Re-write instructions to clarify that a DL or State ID number is required if one has been issued, and SS # should only be used if the voter has not been issued the required documents. Consider using separate form for those voters currently registered who just need to change a name, address, party affiliation etc. Also, consider potential exemption from this requirement for those living in assisted living or nursing care facilities. Use SOS rules to ensure consistent application of regulations on this issue.
- 9) Encourage / Require SOS to make changes to the Voter Registration Drive training to include a requirement that each individual participating in a drive must go through training and hold those that conduct drives improperly to higher level of accountability (greater penalties?)
- 10) Encourage SOS to affirm voter ID information through coordination of SCORE and the Social Security Administration database, similar to what is currently done with the DOR Driver's License database.

Other Issues for Consideration (Identified as significant issues by the Committee).

- 11) Amend statutes to allow current 8 day post election signature verification period to be expanded to include provisions to allow for continued receipt of UOCAVA ballots (still requiring a 7 pm Election Day postmark), and for providing ID for voters who are ID deficient.
- 12) A National Voter Registration Database would eliminate the possibility of citizens registering to vote in more than one jurisdiction.

Submitted January 15, 2009

February 3, 2009

Amendment to Election Reform Commission “Registration-Database Sub-Committee Report” dated January 15, 2009

(from Sally Misare, Chair; Patti Nickell; Robert C. Balink)

OVERVIEW

With the advent of SCORE, a new level of cooperation between the Secretary of State and the County Clerks must be reached. By law, the Secretary of State is required to implement, maintain, and administer a statewide voter registration system (CRS 1-2-301). Also by law, County Clerks are required to maintain the registration information within the system. One cannot exist without the other. It is a cooperative, collaborative arrangement.

County Clerks are the state’s registration experts. They are not agents of the Secretary of State. They are statutorily authorized and responsible to be the counties’ Chief Elections Officers.

County Clerks currently participate in an advisory board for the state vehicle title and registration system, CSTARS. This board has had varying success over the years, dependent upon the cooperative spirit of the executive director. This undependable level of decision making ability is not what is needed for SCORE (“State of Colorado Registration and Election” system: the statewide Voter Registration database).

What is needed is a cooperative sharing of decision making between County Clerks and the Secretary of State; a board of directors, so to speak. The Secretary may be the ultimately responsible party. If so, let’s provide the Secretary with a higher level of authority among the board, such as the chair position with the power of veto.

If not a shared management of the system, then what will be in place? Who will decide what resources are dedicated to what projects? Who will decide when the system (or a component within) needs to be replaced and who will fund the replacement? Who will determine what is best for the system? Who can ensure that clerks will have an ongoing voice in the decisions that affect them so?

If counties are required to finance the system, they should undoubtedly have a say. No say, no pay. Currently, there is no source of funding for ongoing SCORE system maintenance.

Summary

ONGOING GOVERNANCE OF SCORE

Drafted by Russ Ragsdale (City-County Clerk, Broomfield, CO)

- The implementation of a statewide voter registration system (SCORE) necessitates many policy decisions such as:

- Should paper documents accompany a transfer of voter registration records from one county to another or will the electronic image suffice? This question leads to many more regarding the management of electronic vs. paper documents.
- Should a county be allowed to sell voter registration records resident in another county? Should there be a standard pricing structure for the sale of data?
- How much information in the election setup module should a clerk be required to enter?
- Many more policy decisions will arise as the system matures such as:
 - Will GIS integration be implemented and if so, how?
 - Which future application enhancements will be funded?
 - Where will the funding come from?
- As the Chief Election Official and as custodians of voter registration records in their respective counties, Clerk and Recorders require a voice in these decisions.
- As the Chief State Election Officer and having responsibility for the SCORE budget, the Secretary of State must be involved in policy decisions regarding the system.
- Many decisions that will be faced in the future will require changes in legislation. Legislative efforts will be more successful if they are cooperative between the County Clerks and the Secretary.

Recommendations

- A board of directors will be established to provide oversight to the operations and direction of SCORE.
- The Board will first be established under directive of the Secretary of State. Legislation will be sought in the upcoming session establishing the board statutorily.
- The board will consist of the Secretary of State and a (to be determined) number of Colorado County Clerk and Recorders, length of terms to be determined.
- The board will be chaired by the Secretary of State.
- A charter will be developed detailing roles and responsibilities.
 - Board members and the chair will have equal voting weight.
 - The chair will have veto authority over any vote taken.
 - The board will meet no less than 4 times annually.

Appendix C

Technology and Auditing recommendations



FINAL RECOMMENDATIONS OF TECHNOLOGY AND AUDIT SUBCOMMITTEE

These recommendations are forward-looking and are based on the understanding and assumptions that they are technologically and fiscally feasible, including that there will be technology to cost-effectively produce paper ballots for all counties for early voting.

1. House Bill 1155 and other current requirements of Colorado law

After the Secretary of State's December 2007 decertification of the electronic voting systems (EVS) used by the vast majority of Colorado counties, Governor Bill Ritter signed into law House Bill 1155, emergency legislation which provided for retesting and interim recertification of any decertified voting machines. C.R.S. § 1-5-622. Voting systems certified pursuant to H.B. 1155 expire by its terms on July 1, 2009. C.R.S. § 1-5-622(4).

We agreed that the interim emergency certifications provided for in H.B. 1155 would be extended through the 2013 election cycle. The purpose of this extension is to provide financial relief to cash-strapped counties and to provide ample time to phase in the next generation of technology as provided in Recommendation 2 below.

In other words, currently certified EVS could continue to be used through the 2013 election cycle, subject to all conditions that attached to the 2007 and 2008 certifications of such EVS. See C.R.S. § 1-5-601 *et seq.*; Election Rule 45.

The interim certification provided by the extension of H.B. 1155 through the 2013 election cycle would expire after the 2013 election cycle. The bill extending H.B. 1155 would be clear that those EVS would be decertified after the 2013 election cycle, if those systems cannot meet then-applicable certification standards and could no longer be used.

The statutory requirement that all direct recording electronic (DRE) voting equipment have Voter-Verified Paper Audit Trails (VVPATs) by 2010 (C.R.S. § 1-5-802) will be repealed so that Jefferson and Arapahoe counties do not have to go through expensive short-term retrofits on DREs not currently equipped with VVPATs.

2. Paper ballot/optical scan-based EVS

For all elections after the 2013 election cycle (and for all new EVS purchased and utilized before the 2013 election cycle), all Colorado counties will be required to utilize a paper ballot/optical scan-based electronic voting system which has been certified in accordance with the revised certification procedures described in Recommendation 3 below.

Mark Baisley dissents from the requirement that after 2013, all counties will be required to utilize a paper ballot/optical scan-based system and votes "no" on that portion of the recommendation. Mark joins in all other aspects of the recommendation.

Paper ballot/optical scan-based EVS may include ballot marking devices. Paper ballot/optical scan-based EVS shall be tested and certified by the Colorado Secretary of State in accordance with the standards and procedures described in Recommendation 3 below.

If no alternative technology has been developed by 2013 to meet the federal Help America Vote Act (HAVA) requirements for voters with disabilities (*see* 42 U.S.C. § 15481(a)(3)), DREs may be used for that purpose, provided that they meet then-applicable state certification requirements.

3. Certification of paper ballot/optical scan-based system and modification of EVS whose certifications have been extended pursuant to Recommendation 1 above.

All new EVS and all modifications of currently certified EVS will be required to be tested and certified by the Colorado Secretary of State in accordance with Colorado law and Election Rules as modified by this paragraph. *See* C.R.S. §§ 1-5-601 *et seq.*, § 1-5-704; Election Rules 34, 35, 45.

The current requirement promulgated by the Election Assistance Commission (EAC) that all EVS must be tested and certified as meeting current federal standards (*see* C.R.S. § 1-5-601.5) will be repealed. Those EVS whose certifications are extended through the 2012 general election under Recommendation 1 may be modified subject to testing and certification by the Colorado Secretary of State that such systems, as modified, meet all Colorado testing and certification requirements.

The current statutory requirements and regulatory requirements for certification shall remain in effect, except that the requirement that testing and certification be completed in 90 days, (*see* C.R.S. § 1-5-617(1)(c)), is amended to provide that testing and certification be completed in 180 days.

The Colorado Secretary of State may utilize and rely on testing done by another state's Secretary of State or chief election official, or by a federally-certified testing lab, provided that the Colorado Secretary of State has complete access to all test documentation, test data and test reports. Furthermore, the Colorado Secretary of State must make written findings and certify: (1) that he or she has reviewed the test documentation, data and reports and finds that the testing has been conducted in accordance with state-of-the-art engineering standards and practices; and (2) that the testing met each applicable Colorado requirement.

4. Audit of the performance of all EVS

Auditing is a critically important tool for verifying election results and confirming the accuracy and reliability of electronic voting systems. If audits are effective, then the public can have confidence in the outcome of elections even if the voting systems used are imperfect, because a statistically valid audit can detect and be used to correct human and voting system errors.

The Technology and Audit Subcommittee has reached a consensus that an improved statistically valid audit is of critical importance to improving the security and integrity of Colorado's election process. At this time the Subcommittee's recommendations are general in nature. There are a

number of questions that need to be answered before a time frame for implementation of a new audit process can be established.

Steve Pierson, PhD., Director of Science Policy for the American Statistical Association and other national experts in statistics and election audits were contacted for assistance in this effort. The Subcommittee has had initial dialog with these scholars and plans to continue to work with them to refine its recommendation for an improved audit system for Colorado elections. In addition the Subcommittee is exploring how best to approach the EVS vendors to determine whether and how the current EVS can be modified to report votes in batches that will facilitate a risk based audit.

PRELIMINARY AUDIT RECOMMENDATIONS

The Technology and Audit Subcommittee recommends that an updated audit requirement provide for a risk-based audit methodology instead of the current fixed-percent audit. All aspects of each election (mail-in voting/early voting/Election Day voting/other) shall be subject to the same audit requirements. Additional elements to be included in the recommended changes to the audit law include: (a) a requirement that all voting systems report votes in auditable batches, (b) a definition of the confidence level required, e.g. 90% or some lesser confidence level, (c) the requirement that the audit units be randomly selected, and (d) that the audit process be transparent. Finally the Subcommittee recommends that audit processes must be developed for each voting system in Colorado and accomplished in such a way that is easily understood by public officials charged with completing this work.

It is further recommended that the improved auditing process be defined by Colorado Statute setting out the general requirements, standards, and procedures for a risk based election audit. The new audit statute should further provide that the Colorado Department of State implement risk based election audits by a notice and comment rulemaking which will result in a new election rule giving guidance to the Counties as to specific requirements, standards, and procedures to be followed. *See e.g.* C.R.S. § 1-7-514; Election Rule 11.5.4. The new audit election rule is expected to provide for a process of practical auditing program development and allow for future changes within the auditing system as deemed appropriate for future improvements to the program.

Appendix D

Uniformity and Simplification recommendations



Election Reform Commission
Uniformity and Simplicity Sub-Committee Recommendations
Submitted by
Commissioner Stephanie O'Malley
Commissioner Scott Martinez
Commissioner Scott Gessler
January 28, 2009

The overarching consensus among members of the Uniformity and Simplicity Sub-Committee of the Election Reform Commission is that identified areas within the elections environment are primed for uniform and consistent practices. While the members of the committee recognize the need for designated election officials to have flexibility in deciding how best to deliver elections in their respective counties, need exist to have consistent practices where there is opportunity to curtail voter confusion, to enhance training for election judges and poll workers, educate and inform the public, poll watchers, and other interested parties, and to adhere to enhanced uniform procedures that assure votes cast are counted and accounted for adequately. With the overarching consensus in mind, the committee makes the following recommendation and/or observations:

Mail Ballot Elections

Colorado counties should have option to conduct primary and general elections by mail (Commissioner Martinez dissents on this recommendation); however, no county should be forced to conduct its elections by mail. Any legislation that affords an option to counties to conduct a primary or general election by mail should at the very minimum be uniform and consistent with regard to:

Minimum Thresholds – Before an all mail ballot election is allowed to be held, the number of absentee voters in a county in the previous Presidential or Gubernatorial election shall exceed 50% of all active voters.

Service Centers - Any legislation affording opportunity to conduct an election by mail shall include a mandate that the election include a sufficient number of service centers. Legislation should include a formula by which Designated Election Officials must adhere to determine how many service centers are “sufficient”. Recommendations on how to establish the formula include determining the requisite number of sites based on the population of active registered voters and determining the requisite number of sites based on area considerations. The committee recommends that legislation require that each service center provide consistent services to the voting public and that each be required to have secured computer access, be ADA compliant, include a sufficient number of DRE’s, include a sufficient number of voting booths, have ability to distribute second original ballots, have ability to distribute replacement ballots, serve as ballot drop off locations, and provide ability to register in an emergency manner. Any proposed legislation should address hours of operation and mandate a minimum number of days open prior to

Election Day. It should include considerations for whether such service centers must be available during the early voting phase of elections.

Public Comment – The designated election official shall determine the number, location, and manner of operation of service centers, including poll watching activities at service centers, in consultation with the chairpersons of the county central committees of the major political parties and representative of the county organization of any minor political party and after a public comment period of no less than fifteen days and a public hearing held in accordance with the rules adopted by the Secretary of State.

Election Preparation – The committee recommends that any legislation related to an option to conduct an election by mail require that the designated election official meet with an election vendor to determine whether the vendor has capability and capacity to provide a sufficient number of mail ballots in a timely manner. The committee additionally recommends that legislation require that the designated election official meet with the United States Postal Service to coordinate mailing, receiving, and tracking of mail ballots.

Voter Eligibility – The committee recommends that legislation related to an option to conduct an election by mail include language specifically mandating who shall receive mail ballots. The language shall include direction to the designated election official that he or she shall mail to all registered voters, or direction that he or she shall mail to all active voters, or direction that the county maintains discretion as to whether to provide a mail ballot to active **or** inactive eligible voters or to active **and** inactive eligible voters. The committee recommends that a companion piece of legislation be considered that re-tools the manner by which the State of Colorado currently approaches its “active/inactive” voter registration designations. New legislation should take into consideration the existence of SCORE, its functionality, and its ability to aid in list maintenance and national change of address tracking.

Unaffiliated Voters – Legislation related to an option to conduct an election by mail should include considerations for managing unaffiliated voters in a Primary Election. Should there be a deadline for affiliating with a party? If so, should the deadline be on Election Day, congruent with the time the voter makes application for a mail ballot, or should a deadline to affiliate be congruent with the voter registration deadline.

Issuing/Counting Ballots – The committee recommends that any legislation related to conducting an election by mail include opportunity for the designated election official to send ballots as early as 30 days prior to election day and that the law allow a designated election official to send bulk mailing no later than 21 days prior to an election. Any law should include specific language as to how a voter may make a request to obtain a replacement ballot, i.e., by phone, internet, email, or fax. The legislation should additionally allow the designated official to begin counting ballots as soon as received or at least 22 days prior to Election Day.

Return of Ballots – The committee recommends that any legislation provide language that will provide uniformity related to methods of returning ballots. At minimum, legislation should require that every polling location/service center have a secure receptacle for voters to cast or drop off their mail ballot. The security of the receptacle shall be consistent with the security of paper or provisional ballots that is already described in statute or SOS rule. Other considerations to think about include whether the State should provide stand alone return boxes (Oregon engages in this practice) and whether it would be in the best interest of the state by law or rule to develop a certification program for ballot collection drives.

Postage – The committee recommends that legislation related to an optional mail ballot election require the county to pay the cost of postage for mail ballots or that counties have the option to pay the cost of postage. If counties are required to pay, legislation should require the state to reimburse counties for postage.

Homeless Voters – Legislation regarding an option to conduct an election by mail should include considerations for servicing homeless voters. Oregon law provides opportunity for homeless voters to list the county clerk’s office as the voter’s mailing residence for the sole purpose of obtaining a mail ballot. Colorado law should mirror this consideration.

Healthcare Facilities – The committee recommends that the term health care facilities be specifically defined in legislation. Counties define this word differently across the state, thus the treatment of eligible voters in these venues varies state wide.

Training

The approach to elections related training across the state is varied and leads to varying application of election related procedures and practices. In an effort to bring some uniformity to training, the committee recommends the following:

Base Line SOS Training - The Secretary of State’s office should produce an Elections Manual addressing Election Officials’ application of the Election laws and rules. The Elections Manual should, at least, contain instructions on all pre-Election Day matters and voter registration issues. The Manual should include instruction on all Election Day issues such as voter ID requirements, treatment of spoiled ballots and poll watcher requirements. Finally, the Manual should include instructions regarding proper ballot counting for each approved voting module/system, including the hand-counting method used in some Colorado counties. The committee recommends that Election Manual be free and publicly available, online, and in a downloadable and searchable format.

Distribution to Election Officials – Prior to publication, it is recommended that each designated election official send County specific rules to be included in a separate section of the Election Manual. The complete Election Manual, including County specific rules, will be distributed to Election Officials for each County. The committee recommends that a SOS rule be promulgated to require that when disputes regarding Elections exist,

the designated election official or its agent shall consult the SOS Election Manual prior to consulting local rules in any Primary or General election. (Commissioner O'Malley dissents with this specific recommendation.) The committee recommends that the Election Manual be bound and the Seal of the State of Colorado be affixed on the cover along with the words "Official Election Manual."

Distribution to Polling Locations – In the interest of uniformity, the committee recommends that sections of the Election Manual relating to Election Day laws and rules be distributed to each polling location/service center. Poll workers should be trained to consult sections of the Election Manual regarding any disputes prior to consulting local rules in any Primary or General Election. (Commissioner O'Malley dissents with this recommendation). The committee recommends that the portion of the Election Manual sent to poll workers be bound and the Seal of the State of Colorado be affixed on the cover along with the words "Official Election Manual for Poll Workers."

Video Training – The committee strongly recommends that the Secretary of State contract for the professional production of video instruction consistent with the contents of the Official Election Manual. The video shall be free and publicly available, online, and in a downloadable and viewable format and shall be used in conjunction with any training provided at the local level.

Forms

Forms used prior to and during the 2008 election cycle were very confusing to voters and in some instances caused voters to be disenfranchised. Several forms, including voter registration, application for mail ballots, combination forms, provisional ballots forms, and provisional ballot envelopes varied across the state. The committee recommends that each of these forms be developed in a manner that minimizes voter confusion, maximizes ease with which to understand and use, and that the Secretary of State's office dedicate resources to obtain professional guidance to develop these documents. The committee additionally recommends that rules be established related to what constitutes an approved and acceptable form certified for use and acceptance by eligible voters, campaigns, voter registration drives, and designated election officials. It is further recommended that uniformity be established with regard to how forms used inside of polling locations, particularly provisional ballot forms and envelopes are managed by election judges and personnel.

Primary Elections

The committee agrees that Colorado law related to conducting Primary Elections is antiquated and that there is need for major legislative revisions in this area. The problems and possible solutions are discussed below. While the committee did not come to any consensus as to recommendations in this area, considerations for discussion are presented below.

Primary Elections - Currently, county clerk and recorders must hold primary elections, even if there is no contested race in the primary. This is a waste of resources and money. Accordingly, in instances where a county clerk and recorder has no contested primary election, it is recommended that the clerk and recorder be allowed to designate the winner of a primary election without conducting the election. This change will require statutory modification. There are several ways to accomplish this.

First, it is recommended that law empower the clerk to cancel the primary election. But this approach includes several challenges. First, it would require rewrite of multiple, interlocking statutes; major party candidates go through the assembly or petition process to gain access to the primary ballot, and the only way in which a major party candidate can run in a general election is by first winning the primary. Second, multiple deadlines are based on primary elections, such as the time line for petitions or the campaign finance definition of electioneering communications. Third, cancelling a primary election would also reduce a candidate's ability to received contributions for that primary election, thus giving candidates and parties a strong incentive to ensure contested primaries. Arguably, this is easy to do, because a person can easily ensure a primary simply by registering as a write in candidate.

A second approach is to hold a primary in a legal sense, but allow the clerk and recorder to dispense with collecting or tabulating votes. This avoids major statutory changes and it also avoids unintended consequences of actually cancelling a primary, and it eliminates any incentive by a candidate or party to manipulate a primary for campaign finance purposes. On the other hand, it creates a legal fiction that a primary election took place, even though no one cast any votes for the primary. Despite this legal fiction, arguably this is probably the cleanest solution.

Third, a clerk and recorder could still conduct a primary, but limit all votes to a single polling location, thus creating a single polling vote center. Conceivably some clerks already have this capability under C.R.S. § 1-5-102.7, although in some instances it may require Secretary of State approval. This approach would also require the fewest statutory changes – perhaps just a few sentences to section 1-5-102.7. This would still require the clerks to conduct a primary election, but it would vastly reduce the size and complexity of that election. Overall, the second option seems most viable. It maintains the current statutory framework, avoids incentives to artificially create an election, and maximizes the savings for county clerk and recorders.

Canvass Board Procedures

Canvass board procedures for partisan elections are very poorly defined, and the committee agrees that uniformity and simplicity are needed in this area of discussion. The law in this area is in need of a major rewrite. The problems and possible solutions follow.

Composition of Canvass Board. Currently, the major party chairpersons are required to appoint one or more members and certify their appointment “in the manner prescribed by the clerk and recorder.” Current law allows each party chairperson to appoint as many

canvass board members as he or she sees fit. In practice (including the personal experience of Commissioner Gessler) the number of appointees and procedures vary considerably, and in some instances there are too few canvass board members to meaningfully complete the work in the allotted time. Any legislation should explicitly require the clerk to tell the county chairs the number of canvass board members necessary to complete the work, and the county chairs should be required to each appoint the same number of members.

Decision-making Procedures. The law is silent on how the canvass board reaches decisions. Currently, the board consists of members appointed by the chair, plus the clerk and recorder. Thus, if the canvass board operates by majority vote, then the clerk and recorder can easily and consistently be outvoted. In some instances, canvass boards treat all Republicans as one vote, all Democrats as one vote, and the clerk and recorder as one vote. In other instances, certification may require unanimity. Colorado law should specify the proper procedure and provide uniform application of how members are counted.

Duties of Canvass Board. Currently, the canvass board has two duties – reconciling the ballots to confirm that the number counted does not exceed the number case, and certifying the abstract. In light of controversies in other states, there should be one additional, common sense duty – to ensure that the number cast in each precinct does not exceed the number of eligible voters in any precinct. This seems to be a basic safeguard against fraud that has likely been overlooked for years. (Recognizing that human error in elections is common, Commissioner O’Malley believes that the more appropriate action is for legislation to provide for flexibility for the canvass board to inspect and investigate where number of votes cast fail to align with the number of eligible voters.)

Remedies for Improper Certification. Currently minor party and unaffiliated candidates may appoint observers to the canvass board process, but the law is silent if they have an objection. Assumably, a minor party candidate may bring a district court complaint under C.R.S. § 1-1-113, or a person may wait until certification and contest the election results. but it seems appropriate to allow an intermediate, regulatory remedy rather than requiring a full-blown district court hearing or election contest. Accordingly, one should be able to bring an objection to the Secretary of State, who can then quickly investigate and resolve any procedural problems early in the process. This should allow a quick regulatory remedy, rather than require a full-blown district court hearing or election contest.

Remedies for Failure to Certify. The law is also silent if a canvass board refuses to certify the returns. Under section 1-10-104, the law directs that if the results do not conform to law, the canvassing board will still canvass the returns if they are explicit enough in showing the number of votes cast. But this section nonetheless leaves unanswered whether a canvass board must certify defective returns, or what the Secretary of State’s remedies are if the canvass board refuses to certify. The best remedy seems to be to require the canvass board either to certify the results or to transmit non-certified results, with an explanation for the non-certification. This should be explicitly included in statute.

Miscellaneous Considerations

The committee agrees that other areas of discussion related to election reform and uniformity and simplicity are important and in need of attention. These areas include on-line voter registration, SCORE funding (funding for SCORE will sunset in 2010. There is no discussion about replacing this funding or whether counties should uniformly be made to pay funding to continue to support SCORE), Colorado's Active/Inactive statute needs a major re-haul, and Title I in its entirety needs serious revision. It is the hope of the committee that the Secretary of State form an ongoing working group to engage in serious work to re-haul Title I and along with the legislature will continue to advocate for significant revisions guided toward bringing uniformity and simplicity to the elections environment in the state of Colorado.